(2023) 03 NCLT CK 0013

In the National Company Law Tribunal

Case No : I.A. No. 2474 OF 2022 IN CP No. 73 OF 2021

?Prashant Jain RP of Greatwall Corporate Services Private Limited Vs Sunil V Chavan Deputy Commissioner of State Tax ?

Date of Decision : 01-03-2023

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 14, 60(5)
Maharashtra Goods and Service Tax Act, 2017 — Section 54(9)

Citation : (2023) 03 NCLT CK 0013

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Pratiksha Kankariya

Final Decision : Disposed Of

Judgement

Anuradha Sanjay Bhatia, Member (Technical)

1. The present Interlocutory Application No. 2474 of 2022 has been filed by Mr. Prashant Jain, Resolution Professional of Greatwall Corporate Services Private Limited under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter "Code") seeking direction against the Respondent, Pune VAT, Department of GST, Pune to refund the amount of Rs. 80,63,365/- which had been realized by the Respondent-GST Department, in violation of the Moratorium under Section 14 of the Code.

2. The brief facts of the case are that the Corporate Debtor i.e. Greatwall Corporate Services Private Limited was admitted to the Corporate Insolvency Resolution Process (CIRP) in pursuance of CIRP initiation order of this Hon'ble Tribunal, vide order dated 15th March 2022. Moratorium, in accordance with Section 14 of the Insolvency and Bankruptcy code, 2016 (Code) was triggered.

CA Atul Rajwadkar was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor, vide the said order dated 15th March, 2022. In the first meeting of CoC held on 13th May 2022, the CoC members resolved to replace CA

Atul Rajwadkar, the IRP and Mr. Prashant Jain was appointed as the Resolution Professional (RP) vide order dated 5th July, 2022 and the said order was received by the RP on 13th July 2022.

3. Pursuant to the Insolvency Commencement Date, it came to the knowledge of the IRP that the GST Department had issued DRC-13 Notices to various customers of the Corporate Debtor wherein, the customers were required to deposit any amount to be paid to Corporate Debtor, directly to the department. The IRP, through letter dated 18th April 2022 requested the GST Department (the Respondent in this case) to revoke the Notices issued by them with regard to the initiation of the CIRP of the Corporate Debtor. The Respondent (GST Department), duly revoked the notices upon receipt of letter from the IRP.

4. Further, it came to the knowledge of the IRP, that in pursuance of the Notice from the GST Department, various debtors of the Corporate Debtor, deposited an aggregate amount of Rs. 80,63,365/-, from the period commencing from 15.03.2022 (being the date of commencement of CIRP) till 19.04.2022 (being the date on which GST Department revoked the notices previously issued by them). The details of the amounts realized by the GST Department is as follows:

Date

Particulars

Amount (Rs.)

29-03-2022

Gulermak-TPL Pune Metro Joint Venture

7,33,742.00

30-03-2022

Gulermak-TPL Pune Metro Joint Venture

36,94,812.00

31-03-2022

Cosmos Co-Operative Bank Ltd.

5,10,414.00

05-04-2022

Gulermak-TPL Pune Metro Joint Venture

12,21,974.00

05-04-2022

National Cold Chain Resource Center

3,98,519.00

08-04-2022

Gulermak-TPL Pune Metro Joint Venture

15,03,904.00

5. The IRP, vide letter dated 02nd May, 2022 wrote to the Respondent- GST Department, requesting for the refund of the amount deposited by the parties to the GST Department. The copy of the letter dated 02nd May 2022 is annexed to the Application (Annexure-C). It was brought to the notice of this Tribunal that the Suspended /erstwhile management of the Corporate Debtor had filed 'GSTR-3B' after the commencement of CIRP, without the knowledge of IRP and the IRP apprised the Respondent- GST Department of this fact vide his letter dated 02nd May, 2022.

6. This issue was discussed in detail in the 3rd meeting of Committee of Creditors (CoC) wherein the Respondent (GST Department) attended the meeting in its capacity as the operational creditor. In the CoC meeting, the Respondent (GST Department) expressed its inability to refund the amount realized by them pursuant to the commencement of the CIRP. However, they sought time of 15 days to send their reply.

Affidavit in reply on behalf of the Respondent:

7. In its Affidavit-in-reply dated 07th October, 2022, filed by the Deputy Commissioner of State Tax, Pune, it was stated that that the Corporate Debtor i.e. Greatwall Corporate Services Private Limited, having GSTN No. 27AABCG9975E1Z9, is engaged in providing manpower and security services. The Corporate Debtor had not filed the correct return i.e. the Corporate Debtor had paid less amount of taxes than the amount of tax declared in GSTR-1. Therefore, the adjudication orders had been passed in form DRC-07 and total demand of Rs. 11.56 crore was raised. The Corporate Debtor had not made the said payment. Hence, the recovery action has been initiated u/s. 79 of CGST/ MG5T Act. Accordingly, the bank accounts of the available vendors of the Corporate Debtor were attached by serving notices in Form DRC-13.

8. The Respondent-GST Department had issued 15 Notices to the third persons u/ s 79(1) (c) of the GST Act, in Form DRC-13 for the period of 24-11-2021 to 27-12-2021, demanding to pay as per GST return R1, for or on account of amount, which is due and payable to the Corporate Debtor, to the Government, forthwith, upon receipt of the notice. The Respondent submits that all these notices were issued prior to the date of CIRP of the Corporate Debtor and out of which, only 5 third parties have made the payment. The Respondent- GST Department had no control over the payment made by the third party under GST Return R1.

9. The Respondent- GST Department further submits that the amount paid by

the vendors of the Corporate Debtor is lying in the cash ledger maintained on online GST portal, in the account of the Corporate Debtor (i.e. Greatwall Corporate Services Private Limited) and the Respondent- GST Department does not have any control on that account. The Corporate Debtor had made the payment to the Government voluntarily on 31.03.2022 by debiting the amount in cash ledger, on account of filing of GSTR 3B Return, which was overdue for the period October-2021. Further, the Corporate Debtor made the payment on 11.04.2022 by debiting the cash ledger on account of filing the GSTR 3B Returns, which were overdue for the period November 2021, December 2021, January 2021 and February 2021.

10. Further, the Corporate Debtor had filed an appeal before the Hon’ble NCLAT against the admission to CIRP order dated 15th March 2022, wherein the Hon’ble NCLAT had directed that the CoC, in pursuance of the impugned order, dated 15th March, 2022, shall not be constituted. The matter was adjourned to 6th April 2022 and further adjourned to 21st April, 2022.

11. On 21st April 2022, the Hon’ble NCLAT observed that:

“We are of the view that in event, the Appellant is able to make the payment within two weeks from today, it will be open for the Appellant to make 3 Comp. App. (AT) (Ins.) No. 355 of 2022 an Application before the Adjudicating Authority who shall pass appropriate order on the said Application, if settlement, if any takes place. We further observe that in the event the payment is not made as directed, after two weeks the Committee of Creditors shall be constituted. If settlement is made, the Application submitted by the Appellant shall be considered by the Adjudicating Authority in accordance with law.”

12. By virtue of the order dated 21st April 2022, the Corporate Debtor was granted two weeks time by Hon’ble NCLAT to make the payment. It was further observed by Hon’ble NCLAT that “in the event the payment is not made as directed, after two weeks the Committee of Creditors shall be constituted”. The dates on which the payments were made by the Corporate Debtor falls within the period wherein the interim protection was granted by the Hon’ble NCLAT to the Corporate Debtor. Therefore, the payment made by the Corporate Debtor to the Respondent, on account of filing of their overdue returns, does not violate the Section 14 of IBC.

13. To sum up, it was argued by the Respondent- GST Department that the above captioned Interlocutory Application is liable to be dismissed on the following grounds:

i. The above Application has been filed by the Applicant as an afterthought and with a sole purpose to gain time to delay the process of CIRP.

ii. Respondent- GST Department had issued the notices to the third party prior to the CIRP period and there was no violation in respect of Section 14 of the IBC.

iii. Since the Hon’ble NCLAT vide order dated 01.04.2022 had granted time to the

Corporate Debtor to make the payment and the same was continued till 6th April and thereafter till 21st April 2022, by virtue of order 21st April 2022, the Corporate Debtor was granted two weeks time to make the payment. It was observed by the Hon’ble NCLAT that in the event the payment is not made as directed, after two weeks the Committee of Creditors shall be constituted. The dates on which the payments were made by the Corporate Debtor falls within the period wherein the interim protection was granted by the Hon’ble NCLAT to the Corporate Debtor. Therefore, there is no violation with respect of Section 14 of IBC.

14. The Corporate Debtor is asking for refund of the amount and there is no provision of the refund under Section 54 (9) of the Central Goods and Service Tax Act,/ Maharashtra Goods and Service Tax Act, 2017, as prayed by the RP.

15. There is no merit in the contentions raised by the Applicant in the Application and thus, this application deserves to be dismissed.

Findings:-

16. We have heard the Learned Counsel for the parties and perused the material available on record.

17. It is evident from the records that the order of admission was passed by this Tribunal vide order dated 15.03.2022 and the CIRP of Corporate Debtor thereby commenced. The Respondent herein realized an amount of Rs. 80,63,365/- after the commencement of CIRP i.e. 15th March, 2022 thereby violating the Moratorium u/s. 14 of IBC. Section 14 of the Code contemplates that the recovery of the amount from the debtors of the Corporate Debtor is in complete violation of the provisions of the Code.

18. Pursuant to the Insolvency commencement date, the GST department had issued DRC-13 notices to the various customers of the Corporate Debtor and only after the issuance of the notice from the GST department, it came to the knowledge of the IRP that an amount of Rs. 80,63,365/- had been deposited by various Debtors of the Corporate Debtor.

19. Further, there is no provision of the refund of the amount under Section 54 of the Central Goods and Service Tax Act/ Maharashtra Goods and Service Tax Act, 2017. However, collecting any amount during the CIRP period is in the violation of Moratorium as the act of Respondent is inconsistent with the provisions of IBC, 2016. The Respondent should comply with the letter dated 02.05.2022 written by the IRP, Mr. Atul Rajwadkar to Mr. Sunil Chavan, Deputy Commissioner Sales Tax, PUN-VAT-E-706, Pune.

20. The Respondent has further placed reliance upon the NCLAT order dated 21st April 2022. We are of the considered view that the NCLAT order does not mention any stay on the CIRP procedure and also there was no stay on moratorium which was triggered by order dated 15.03.2022. Thus the realization between 31.03.2022 and 11.04.2022 is in the violation of Section 14 of the Code.

21. In view of the above facts and circumstances, this Bench is of the considered opinion that the above application deserves to be allowed.

22. Accordingly, IA 2474/2022 is allowed and disposed of.