(2019) 09 NCLT CK 0023

In the National Company Law Tribunal

Case No : Miscellaneous Application No. 875 Of 2019, Company Petition No. 608 IB Of 2017

V. Venkata Sivakumar (Liquidator) (Rathna Stores Pvt. Ltd. — APPELLANT

Vs

Velavan Stores And Others — RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Citation : (2019) 09 NCLT CK 0023

Hon'ble Judges : B.S.V. Prakash Kumar, J;S. Vijayaraghavan, Member (Technical)

Bench : Division Bench

Final Decision : Allowed

Judgement

1. It is an application filed by the Liquidator against R-1 (Velavan Stores - prospective purchaser on private sale), R-2 (Zonal Head, UCO Bank), R-3 Income-Tax Officer, Corporate Ward-5(4), R-4 (Tax Recovery Officer-5) and R-5 (Sub-Registrar, Guindy, Chennai) seeking reliefs as follows:

(i) "to direct R3 and R4 for the vacation of the attachment notice of Tax Recovery Officer vide their letter dated 24.07.2019 and previous notices issued if any prior to the order of Liquidation under IBC 2016;

iii) to direct the Sub-Registrar, Guindy (R5) to effect the transfer of property as per the deed of sale entered into between the Liquidator (Applicant) and the Purchaser (R1) free of encumbrances of Income Tax notice attachment; and

(iii) pass such further orders as may be just and necessary in the facts and circumstances of the matter and render justice"

2. On perusal of this application it appears that the Income Tax Authorities i.e. R3 and R.4 issued attachment over the part of the liquidation estate presently on the private sale. While attachment notice pending against liquidation estate issued by R.3 and R.4, the Liquidator counsel submits that this attachment shall

be vacated for attachment over the liquidation estate pending as on the date of admission is not maintainable. The only remedy that is available to Income Tax authorities in respect to liquidation estate is to make a claim before the Liquidator with regard to the dues realisable from the Corporate Debtor.

3. The Liquidator counsel has further stated that the Liquidator has followed the procedure laid down under 178(6) of Income Tax Act, 1961 by giving intimation to the Assessing Officer in respect to his appointment as a Liquidator by this Adjudicating Authority and the same provision having envisaged over riding provision under Section 178 sub-section 6 is not applicable to Insolvency & Bankruptcy Code as IBC has been saved from Section 178 of Income Tax Act. He has stated that Section 238 of Insolvency & Bankruptcy Code envisages over riding effect over any other provision of law or any act which is inconsistent with the provisions of Insolvency & Bankruptcy Code, the IBC will prevail over the remaining laws in existence. Based on that legal proposition, he has sought for vacation of the attachment issued by Tax Recovery Officer against M/s. Rathna Stores Pvt. Ltd. (Corporate Debtor).

4. As against the submissions of the Liquidator counsel, the Income Tax authorities counsel has stated that the authority be permitted to proceed against the Directors of the Corporate Debtor, with regard to this submission, it goes without saying that Income Tax authorities is at liberty to proceed against any other person other than the Corporate Debtor in respect to the dues realisable by authority as envisaged in Section 179 of the Income Tax Act.

5. In view of the aforesaid proposition of law, we are of the considered view that attachment dated 17.02.2015 issued by R.4 shall be vacated so as to enable the Liquidator to proceed with the liquidation of Corporate Debtor as envisaged under Insolvency and Bankruptcy Code.

6. Accordingly, this MA/875/2019 is hereby allowed vacating the attachment dated 17.02.2015 issued by R.4.