GAHC010032722020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 1059/2020

1:NATIONAL PLYWOOD INDUSTRIES LTD.
REGD. OFFICE AT MAKUM PATHAR, MARGHERITA, PIN- 786187, DIST.- TINSUKIA, ASSAM AND HEAD OFFICE AT 5, FANCY LANE, KOLKATA, REP. BY ITS AUTHORISED SIGNATORY, SRI RAJ KUMAR BAJAJ, AGE- 66 YEARS.

VERSUS

1:UNION OF INDIA AND ANR.
REP. BY THE MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI-110001.

2:THE COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
DIBRUGARH
MILAN NAGAR
LANE F
P.O. C.R. BUILDING
DIBRUGARH- 786003
DIST.- DIBRUGARH
ASSAM

Advocate for the Petitioner : MR. M KATAKI

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 17-02-2020

JUDGMENT AND ORDER(ORAL)

Heard Mr. M Kataki, learned counsel for the petitioner and Mr. SC Keyal, learned ASGI appearing for the Union of India.

2. The order dated 15.11.2019 of the Commissioner, GST, Dibrugarh is assailed in this writ petition. By the said order, a requirement for payment of Rs.1,82,67,651/- on the petitioner M/S National Plywood Industries Limited was confirmed and further a penalty of Rs.1,82,67,581/- was imposed under Rule 173Q (1) of the Central Excise Rules, 1944. The said order dated 15.11.2019 has been assailed by stating that the petitioner has been held to be a corporate debtor as per the order dated 26.08.2019 of the National Company Law Tribunal, Guwahati and accordingly an order of moratorium had been passed under Section 13 of the Insolvency and Bankruptcy Code, 2016.

3. Mr. SC Keyal, learned ASGI refers to the paragraph 3.2 of the order of the Commissioner dated 15.11.2019 which is extracted as under:

> "*3.2 I find that the Hon'ble National Company Law Tribunal, Guwahati Bench had passed the order dated 26.08.2019 in respect of the bankruptcy case of the assessee wherein they are liable to certain debt to the financial creditor and their properties are also controlled for the debt including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. By virtue of the order dated 26.08.2019, the Hon'ble National Company Law Tribunal has declared a Moratorium under the insolvency & bankruptcy code-2016 in terms of Section 14 of the said code vide which proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority was prohibited. Now, the question arises whether adjudication*

of Show cause notices would mean an execution order or be treated as decree against them. I find that adjudication means determination of liability against any assessee to whom show cause notices have been served and in the instant case also there is no bar of the tax authority to carry out the exercise of adjudication process for determining the liability of the assessee towards the department."

4. By relying on the view taken by the Commissioner, Mr. Keyal submits that the said objection raised by the petitioner as regards the order of moratorium passed by the National Company Law Tribunal had been taken care of by the Commissioner in its order.

5. We have perused the order of the Commissioner in paragraph 3.2 of the order dated 15.11.2019. The Commissioner takes a view that by the order dated 26.08.2019, the National Company Law Tribunal has declared a moratorium under Section 14 (Section 13) of The Insolvency and Bankruptcy Code, 2016 against the corporate debtor in respect of execution of any judgment and decree or order of any court of law, tribunal, arbitration panel or other authority. Accordingly, in the order of the Commissioner a question was raised whether issuance of show cause notice by the GST authorities would mean to be an execution of an order or it be treated as decree against the petitioner. By raising such question, the objection that the further proceeding is not maintainable because of the order of moratorium of the National Company Law Tribunal was overruled.

6. Section 14 (1) of the Insolvency and Bankruptcy Code, 2016 is as follows:

"*14. Moratorium- (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 off by the corporate debtor any

of its assets or any legal right or beneficial interest therein;

(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 (54 of 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."

7. Section 14 –(1) (a) provides that on the insolvency commencement date, the adjudicating authority shall by order declare a moratorium for prohibiting, amongst others, the institution of suits or continuation of the pending suits or proceeding against the corporate debtor, including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

8. Section 14-(1) (a), amongst others, refers to institution of suits or continuation of pending suits or proceeding, which also includes execution of any judgment and decree or order of any court of law, tribunal, arbitration panel or other authority. The dominant provision of section 14-(1) (a) being institution of suits or continuation of pending suits or proceedings, it is not necessary that only the execution of judgment and decree or order of any court of law, tribunal, arbitration panel or other authority, is prohibited under Section 14 –(1) (a). The other provision as regards the institution of suits or continuation of the pending suits or proceedings being a provision of Section 14 –(1) (a), in a plain reading of Section 14-1(a) would also have to be prohibited.

9. From the order dated 15.1.2019, it is discernible that the aspect as to whether a pending proceeding before GST authority is also a proceeding as provided in Section 14- (1) (a) has not been examined by the Commissioner of GST and consequently the implication thereof i.e. if it is a proceeding whether the order of moratorium would also cover the said proceeding, has also not been looked into.

10. Accordingly, the order dated 15.11.2019 is hereby set aside and the matter is

remanded back for a fresh consideration by examining the aspect as to whether the order of moratorium of the National Company Law Tribunal also covers the proceeding pending before the GST authorities under the GST Act 2017.

11. The required consideration be made within a period of one month from the date of receipt of a certified copy of this order.

12. The writ petition stands disposed of.

JUDGE

Comparing Assistant