

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 894 of 2021**

[Arising out of Order dated 08.03.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court-1, in I.A No.463/AHM/ 2019 in CP(IB) No. 175/AHM/2018]

In the matter of:

**The Assistant Commissioner
Central Goods and Service Tax, Division- Mehsana,
Gandhinagar Commissionerate,
2nd Floor, Sardar Patel Vyapaar Sankul**

....Appellant

Vs.

**Mr. Pravin Charan Dwary,
IRP/RP, M/s. Swastik Ceracon
407, Akchhat Tower, Pakwan Cross Road,
S.G Highway, Bodakdev,
Ahmedabad- 380015**

...Respondent

For Appellant: Ms. Nitya Sharma, Standing Counsel

For Respondent: None.

**J U D G M E N T
(01st December, 2021)**

Ashok Bhushan, J.

1. This Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) has been filed against the order dated 08.03.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, rejecting I.A. 463/AHM/2019 filed by the Appellant in C.P. (IB) No. 175/AHM/2018. The Adjudicating Authority passed

an order dated 15.01.2019 in C.P. (IB) No. 175/9/NCLT/AHM/2018 initiating Corporate Insolvency Resolution Process (CIRP) against 'Swastik Ceracon Limited' (Corporate Debtor). The Central GST Range-I, Mehsana, attached finished goods lying in the factory premises of Unit-1 of 'Swastik Ceracon Limited' on 31.01.2018. The Resolution Professional was appointed and Adjudicating Authority declared 'Moratorium' by order dated 15.01.2019. The Resolution Professional wrote a letter which was received by Assistant Commissioner Central GST wherein the Resolution Professional informed the department that CIRP has been started by order dated 15.01.2019 hence request was made that goods which were ceased by Panchanama dated 31.01.2018 be not sold. An Application was filed by the Appellant before the Adjudicating Authority being I.A No. 463 of 2019 seeking permission of the Adjudicating Authority to allow them to auction the ceased goods which Application having been rejected by the impugned judgment, this Appeal has been filed.

2. Learned Counsel for the Appellant submits that attachment of goods belonging to 'Swastik Ceracon Limited' being on 31.01.2018, the Appellant was entitled to auction the said goods to realise their dues. Learned Counsel for the Appellant submits that there being huge recovery of Government dues against the Corporate Debtor, an Application has been moved before the Adjudicating Authority to allow auction of attached goods. It is further submitted that the Appellant has already filed his claim in Form-B for total tax of Rs.25,82,25,560/-. Learned Counsel for the Appellant has relied on Panchanama dated 31.01.2018.

3. We have heard the Learned Counsel for the Appellant and perused the record.

4. There is no dispute that finished goods of the Corporate Debtor were attached on 31.01.2018. Permission for auctioning of the said goods was sought for by Application I.A. No. 463 of 2020 filed on 12.07.2019. Section 14 of the 'I&B Code' deals with 'Moratorium'. Sub-section (1) of Section 14 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 judgement, 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.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]”

5. The order dated 15.01.2019 passed by the Adjudicating Authority which is part of the Appeal clearly indicates that ‘Moratorium’ was declared by the Adjudicating Authority by para 14 of the order.

6. The Adjudicating Authority did not commit any error in not allowing I.A. 463 of 2019 in view of pendency of CIRP. We may refer to the judgment of the Hon’ble Supreme Court in **“Anand Rao Korada, Resolution Professional vs. Varsha Fabrics Private Limited and Ors.- (2020) 14 SCC 198”**.

7. In the above case, Financial Creditor has filed an Application under Section 7 of the ‘I&B Code’ which was admitted on 04.06.2019 and Moratorium was declared. During the pendency of Moratorium in WP (C) No. 7939 of 2011, interim orders were passed by the Orissa High Court on

14.08.2019 and 05.09.2019. Appeal was filed in the Hon'ble Supreme Court challenging the interim order passed by the Orissa High Court on the ground that since CIRP proceedings has commenced against Respondent No.4, proceedings before the High Court ought to have been stayed. The Hon'ble Supreme Court after referring to Sections 14, 238 & 231 of the 'I&B Code', in Paragraphs 11 and 12 held as follows:-

“11. In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor – Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case.

12. The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4–Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.”

8. In view of the law laid down by the Hon'ble Supreme Court as above, we do not find any infirmity in the impugned order passed by the Adjudicating Authority rejecting I.A. 463 of 2019. Furthermore, the Appellant has already filed his claim on 04.06.2019 in Form-B. We do not find any good ground to

entertain this Appeal. There is no merit in this Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice Jarat Kumar Jain]
Member (Judicial)**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

New Delhi
Anjali