

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 19

IA 1585/2024

In

C.P. (IB)/937(MB)2023

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)
ORDER SHEET OF THE HEARING ON 10.04.2024

NAME OF THE PARTIES: S. GOPALKRISHNAN

VS

BELLEZZA DESIGN AND INTERIORS MR.
IRFAN SHAIKH

Section 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. Mr. Akhil Sarthy, Ld. Counsel for the Petitioner present.
2. This IA 1585/2024 has been filed by the Mr. S. Gopalakrishnan (Applicant) u/s 60 (5) of the Code seeking following reliefs:
 - a. To direct the Respondent to release the amount Rs. 23,22,504 /-towards refund Income Tax for Assessment year 2023-24 in the bank account of the respondent as mentioned below:

A/c no. 104405003913;
IFSC : ICIC0001044 ;
Authorised Signatory : Mr. S. Gopalakrishnan
 - b. That this Tribunal be pleased to direct the respondent to withdraw its letter dated 25.03.2022 or any subsequent letter of such nature there by proposing to adjust the outstanding demand for AY 2017-18 of the

Corporate Debtor, against the refund amount of subsequent Assessment years.

3. On 08/12/2023 this Tribunal by an order appointed the Applicant in the Insolvency Application no. 937 of 2023 filed by the Corporate Applicant under section 10 Code, 2016. On 08/12/2023 the Corporate Debtor was admitted in insolvency passed by this Tribunal in Insolvency application no. 937 of 2023 filed by the Corporate Applicant.

3.1. On 12/12/2023 Applicant issued a public announcement to call upon the claims from the creditors of the Corporate Debtor in the two newspapers being Navakaal Mumbai.

3.2. While going through the record of Corporate Debtor the Applicant came across a Penalty Order dt. 26.03.2022 issued by the Assessing Officer of Income Tax u/s 271G for a sum of Rs.21,62,948/- for A.Y. 2017-18 against the Corporate Debtor. Asstt. Director of Income tax gave intimation on 21.06.2022 to Corporate proposing to adjust penalty of Rs.21,62,948/- against the amount of Refund of Income Tax Payable to the Corporate Debtor.

3.3. On 22/12/2023 the Applicant received the intimation from the Income Tax Department informing the Income tax refund of Rs. 23,22,504 /- receivable by Corporate Debtor from the Respondent for the AY 2023-2024 shall be adjusted against FY 2022-2023

3.4. On 06/01/2024 the Applicant addressed a letter to the Deputy Director of the Income Tax, CPC, Bengaluru the CIRP process has been commenced with respect to the Corporate Debtor and hence the Respondent Department should proceed to release the amount of refund of Tax of Rs. 23,22,500/-.

3.5. On 15/01/2024 the Applicant received the claim under Form C from the respondent claiming to recover an amount of Rs. 21,62,948/- from the corporate debtor. in the nature of income tax demand under section 271 G for the Assessment year 2017-2018.

3.6.9. Respondent being the Central Government vide its aforesaid letter dated 21.06.2022 proposed to adjust the statutory dues payable by Corporate Debtor i.e. Rs. 21,62,948/- for the A.Y. 2017-18. The dispute pertains to adjustment of refund for AY 2022-23 towards the demand for AY 2017-18.

4. Heard learned counsel for the Applicant and perused the records.

4.1. In this case a Demand was raised on 26.03.2022 and the CIRP commenced on 08.12.2023. Further, the Respondent Department determined a refund of Rs. 23,22,500/- on 22.12.2023 for AY 2022-23 by which time the moratorium had commenced. The Respondent has already filed a claim in respect of demand for the AY 2017-18 and the same has already been admitted by the Resolution Professional. Section 14 of the Code bars the recovery from the properties of the Corporate Debtor after commencement of the moratorium. Further, the Code provides for settlement of amounts owed to the Creditors including statutory authorities as on Insolvency Commencement date out of the assets available on that date in accordance with the Resolution process or liquidation process as the case may be. Accordingly, appropriation of refund amounting to Rs. 23,22,500/- by the Department against the demand for AY 2017-18 is impermissible under the Code. Accordingly, the Respondent is directed to refund the said amount to the Applicant within 30 days.

5. In view of above, the I.A. 1585/2024 is allowed and disposed of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
/NP/

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)