

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI

IA(IBC)/141/KOB/2023
IN
CP(IBC)/06/KOB/2022

(Under Section 60(5), 74 IBC R/W 11 OF NCLT RULES, 2016)
K. Easwara Pillai (RP) of Mangomeadows. Vs. GST Department

MEMO OF PARTIES

K. Easwara Pillai – Resolution Professional
Mangomeadows Agricultural Pleasure Land Private Limited, Building No. XV/175A, Mangomeadows, Ayamkudy P.O., Kaduthuruthy, Kottayam, Kerala-686 613;

... Applicant

Versus

Goods and Services Tax Department

... Respondent

In the matter of: -

Kosamattam Finance Limited, Kosamattam Mathew K. Cherian Buildings, Market Junction, Kottayam, Kerala- 686 001;

... Financial Creditor

Versus

Mangomeadows Agricultural Pleasure Land Private Limited, Building No. XV/175A, Mangomeadows, Ayamkudy P.O., Kaduthuruthy, Kottayam, Kerala-686 613.

... Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For applicant Mr. Aditya Gauri,
Mr. Jayesh Gupta, Adv
Mr. K Easwara Pillai, RP

For Respondent Mr. Arun Chandy, Govt. Pleader
Mr. Dhananjay Sud, Adv for RP

Order reserved on: 20.07.2023
Order pronounced on: 26.07.2023

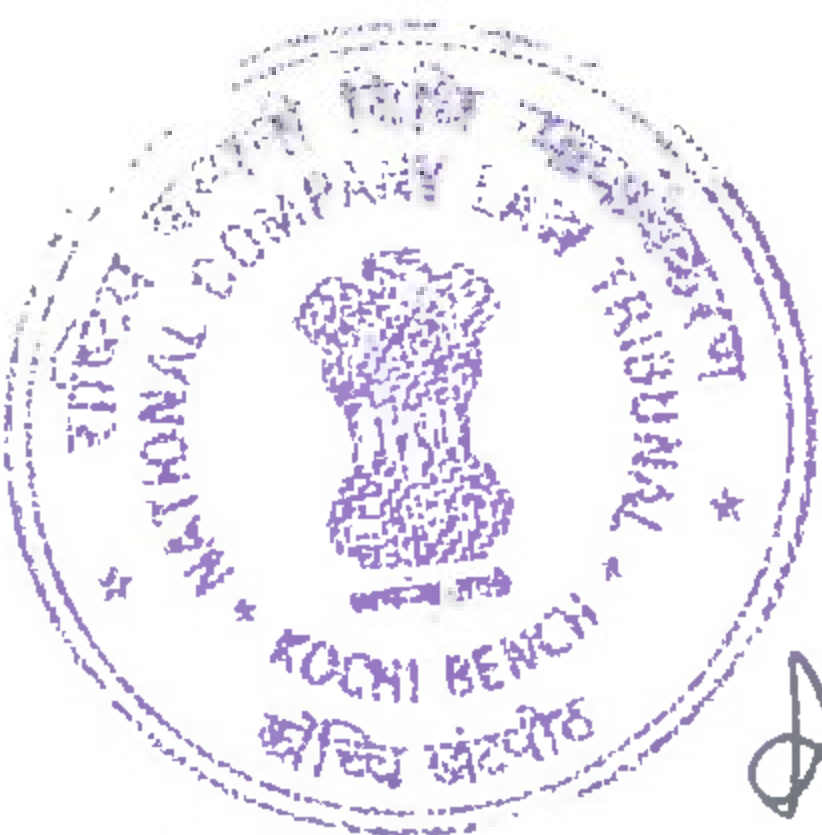


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ORDER

1. The application is filed under section 60 (5) of IBC, 2016 by the Resolution profession for direction directing the respondent to release the assets (documents) which were seized by the Respondent on 10.03.2023 and to initiate proceedings against the respondent under section 70(2) of IBC, 2016.
2. The brief facts of the case necessary to dispose of this application are as follows:
The corporate debtor M/s Mango meadows Agricultural Pleasure land Private Limited, engaged in business of amusement park was admitted into CIRP in C.P.No.6/KOB/2022 on 25.01.2023 by this Adjudicating Authority on the section 7 of IBC 2016 petition filed by financial creditor "Kosamattam Finance Limited". The applicant was appointed as IRP, then the applicant made a public announcement under Form A on 28.01.2023 inviting claims from the creditors. Intimation regarding the order of CIRP against the corporate debtor was sent to respondent on 01.03.2023. The respondent submitted its claim for a sum of Rs.36,56,077.51/- on 06.03.2023. In pursuance of the CIRP order moratorium under section 14 of IBC 2016 is came into operation/effect from 25.01.2023. The corporate debtor as a going concern, its management vest with the applicant. The respondent knowing the CIRP order passed against the corporate debtor and after submitted its claim, all of a sudden on 10.03.2023 the respondent raided the premises of the corporate debtor after issued summon dated 10.03.2023 to Mr. N.K. Kurian, suspended Managing Director of the corporate debtor in his presence and obtained his statement. The raid was conducted by the respondent and seized all the account documents listed in seizure mahazar Annexure A4. The Respondent also sent a summon dated 13.03.2023 Annexure A5 to the applicant to appear for an inquiry on 20.03.2023. The applicant in gross violation of moratorium order raided the premises of corporate debtor and seized the documents. Hence this petition.
3. On the respondent side filed counter in which admitted the above facts and submitted that the corporate debtor is engaging in business of amusement park and registered with GST Act. On receipt of specific intelligence information of Tax evasion by the corporate debtor the search was conducted under section 67(2) of



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Act. On the search tax evasion was detected and seized the seven registers. Thereafter summons dated 13.03.2023 and 28.03.2023 were issued to the applicant to produce the Books of account and to record statement, but the applicant not appeared instead he filed this application. The search was conducted to gather evidences for determination of tax under section 74 of GST Act. The tax determination and tax assessment are not covered under moratorium. The recovery of tax alone prohibited by virtue of moratorium order passed under IBC. The summon were issued to erstwhile directors of corporate debtor to gather documents and to record their statements. There is no bar in the Act to issue summon to erstwhile directors of the corporate debtor. The corporate debtor is presently under the management of applicant hence summon was issued to him also to gather evidence and to record his statements to determine tax liability of corporate debtor under section 74 of GST Act. To arrest the leakage of revenue to the exchequer the search was conducted under section 67(2), the summons issued under section 70, for determination tax under section 74 of GST Act are unavoidable. The search and seizure of records made by the respondent are not against the moratorium order of section 14 of IBC, 2016.

4. As stated earlier the facts of the case narrated above are admitted by both sides. On the applicant side argued that the search and seizure done by the respondent on 10.03.2023 are against the moratorium order. On the respondent side argued that proceedings for determination of tax liability is not against the moratorium order passed under section 14 of IBC, 2016, but Proceedings to recover the tax alone prohibited under section 14 of IBC, 2016. On the basis of pleadings and arguments the following point is framed for determination:

Whether the search and seizure of records of the corporate debtor and issuance of summons to applicant/resolution profession are violative of moratorium order passed under section 14 of IBC, 2016?

5. There is no dispute regarding the facts of the case that the respondent conducted raid in the premises of corporate debtor on 10.03.2023 during moratorium period and seized the documents in the presence suspended Board of director. On the respondent side justified the action that the acts of the respondent come under the



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purview of part of assessment proceeding. Further submitted irrespective of moratorium the respondents are empowered to raid the premises of any person registered with under the GST, inclusive of corporate debtor under the management of resolution professional under section 67 of the Kerala State Goods and Services Tax Act 2017. In support of his contention relies upon the following Apex court citations.

- (1) M/s Embassy Property Development Pvt Ltd vs State of Karnataka and Others. [2020] ibclaw.in 12 SC
- (2) Sundaresh Bhatt Liquidator of ABG shipyard vs Central Board of Indirect Taxes and customs 2022 Live Law (SC) 715.

6. In the Embassy case the respondent relied upon para 40 of the Judgment, there it is observed that to enforce any public law NCLT cannot be approached through resolution professional. There the subject involved is the Government of Karnataka rejected the request of Resolution professional to extend the lease agreement beyond the period of agreement. Against the said rejection order the Resolution professional approached the NCLT, in such circumstances it is observed that right not to be dispossessed found in section 14 (1) (d) will have nothing to do with the rights conferred by a mining lease especially on a government land. There it is held that NCLT did not have jurisdiction to give direction to Government to execute supplement lease deed. The question of initiating proceeding against the corporate debtor during the period of moratorium is not discussed in this citation hence this is not strengthening the case of the respondent.

7. In the second citation Sundaresh Bhatt Liquidator of ABG shipyard vs Central Board of Indirect Taxes and customs 2022 Live Law (SC) 715. the respondent relies upon para 44 of the judgment it runs as follows:

44. Therefore this Court held that the authorities can only take steps to determine the tax, Interest, fines, or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the customs Act in this context.



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8. In this case the Apex court observed that the custom authorities under the customs Act during the period of moratorium can only take steps to determine the tax, interest, fine or any penalty which is due. However, the authority cannot transgress such boundary and proceed to initiate recovery in violation of section 14 or 33(5) of IBC, 2016.
9. In this case the respondent taken shelter that the raid conducted by the respondent on 10.03.2023 is only part of proceeding to determine the tax due and it was not a proceeding to recover the dues.
10. The assessment is defined in Section 2(11) of the Kerala State Goods and Services Tax Act 2017, and chapter XII of the said Act from sections 59 to 64 deals with the various kinds and ways of assessment. The respondent under the guise of assessing or determining the dues, transgress and invoked the coercive provisions of law in Chapter XIV of the Kerala State Goods and Services Tax Act 2017. In pursuance of search the respondent issued a summon to the applicant under section 70 the Kerala State Goods and Services Tax Act 2017, to attend an inquiry to give evidence and to record statements. Section 70 (2) of the Kerala State Goods and Services Tax Act 2017, runs as follow:
2. *Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).*
11. The above provision is also quoted in the summon Annexure 5 of the petition issued to the applicant. Thus, it is made clear the respondent as an "Authority" under the Kerala State Goods and Services Tax Act 2017, initiated proceeding against the corporate debtor during the period of moratorium. This is prohibited under section 14(1)(a) of IBC 2016.
12. The Karnataka High Court in Associate Décor Limited Rep. by Resolution professional vs Deputy Commissioner of Commercial Taxes in W.P.No.17303/2021(T-RES) dated 16.12.2021, after referring Apex court citations held that the notice issued under section 65 the State Goods and Services Tax Act 2017, R/w Rule 101(4) of KGST Rule, informing the discrepancies found in audit and asked



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the registered person to submit reply, is hit by moratorium order passed under section 14 of IBC 2016 and stayed/kept in abeyance, the proceedings pursuant to the said impugned notice till the lifting of moratorium.

13. The Government of India, Ministry of Finance, finance Department also issued Circular No.134/04/2020-GST under section 168(1) CGST Act, Annexure A1 of the petition explaining that no coercive action to be taken in respect of dues of GST pertaining to corporate debtor, under the CIRP. The respondent despite the supra guidance taken the coercive action.
14. The acts of the respondent undermined the authority of Resolution professional and because of seizure of Books of accounts of the corporate debtor causes much inconvenience and paralyzed the Resolution process, the same shall be completed in time bound manner.
15. In the circumstances it is concluded that the search and seizure of records of the corporate debtor and issuance summons to applicant/resolution profession are violative of moratorium order passed under section 14 of IBC, 2016.
16. On the applicant side prayed in the application to initiate proceeding against the respondent for violation of moratorium order under section 74(2) of IBC, 2016. This section is criminal in nature fall under Chapter VII under the heading Offences and Penalties, hence under section 236 (1) of IBC, 2016 special court alone have jurisdiction. Further under section 236 (2) of IBC, 2016 cognizance of the offence can be taken only on the compliant of IBBI or Central Government. Hence the applicant is granted liberty to approach the IBBI to proceed against the Respondent's erred officials in this regard.
17. In view of the above discussion we inclined to concede the prayer of the applicant and order the respondent to return all the records seized from the premises of the corporate debtor mentioned in seizure mahazar Annexure P4 and set aside the summon dated 13.03.2023 Annexure P5 issued by the respondent and also impose a compensatory cost of Rs.50,000/- payable by the respondent to applicant towards CIRP cost, and respondent is granted liberty after paid the compensatory cost, to recover the said amount from the erred official(s).



A/T/23
27/2/23

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In the result:

- (i) The respondent is hereby directed to return all the documents seized from the premises of the corporate debtor to the applicant within a week from date of this order.
- (ii) The summon dated 13.03.2023 issued by the respondent to the corporate debtor is hereby set aside.
- (iii) The respondent is hereby directed to pay a compensatory cost of Rs.50,000/- (Rupees fifty thousand only) to the applicant towards the CIRP cost and
- (iv) Liberty is granted to the respondent, after paid the supra compensatory cost to recover it from the erred officials.

18. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

19. Let the certified copy of the order be issued upon compliance with requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.07.26 16:08:18 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.07.26 12:57:49 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this the 26th day of July, 2023.

Certified to be True Copy-


27/7/23

Deputy Registrar
National Company Law Tribunal
Kochi Bench

Kaushal_P.S.

