

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI
Sh. Narinder Kumar, Member (Judicial)

Review Application No. 285/23
M. A. No. 139/23
In Appeals Nos. 429-454/ATVAT/17
(as initially registered in place of single appeal)
Date of Order: 10/08/2023

M/s Minosha India Ltd.,
Plot No. 25, Okhla Phase 3,
New Delhi-110020.

.....Applicant

v.

Commissioner, Department of Trade & Taxes, Delhi.

.....Respondent

M. A. No. 611/22
In Appeals Nos. 429-454/ATVAT/17
(as initially registered in place of single appeal)
Date of Order: 10/08/2023

Commissioner, Department of Trade & Taxes, Delhi

.....Applicant

v.

M/s Minosha India Ltd.,
Plot No. 25, Okhla Phase 3,
New Delhi-110020.

.....Respondent

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Review Application No. 285/23
M. A. No. 139/23 & 611/22
As well as the appeals



Representing Minosha India Ltd. : Sh. Vasant Bhat, CA
Counsel representing the Revenue : Sh. C. M. Sharma.

Order

1. This common order is to dispose of review application No. 285/23, filed by M/s Minosha India Ltd. with prayer for modification in the order dated 04/06/2018 passed by this Appellate Tribunal on application u/s 76 (4) of DVAT Act. The order was passed in appeals Nos. 429-454/17.

This order is also to dispose of application No. 611/22 filed on behalf of Commissioner, Department of Trade & Taxes, Delhi, with prayer for dismissal of the above said appeals No. 429-454/17, initially filed by M/s Ricoh India Ltd. due to non-compliance with the aforesaid order dated 04/06/2018 passed by this Appellate Tribunal.

The third application No. 139/23 being disposed of by this common order has been filed by M/s Minosha India Ltd. with following prayers:

- (a) consider the change in the name of the applicant from Ricoh India Ltd. to Minosha India Ltd. in the initial appeal filed against the impugned order Reference No. 78976/143 dated 11/01/2018.

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- (b) dismiss the miscellaneous application No. 611/22 filed by the respondent for dismissal of the appeal against the impugned order Reference No. 78676/143 dated 11/01/2018 for non-payment of the pre-deposit due to moratorium under IBC.
 - (c) Hold that tax dues under Delhi VAT Act are not recoverable since same has been extinguished as per the NCLT order dated 28/11/2019 under section 31(1) of the IBC.
 - (d) Set aside the direction of OHA in the impugned order Reference No. 78676/143 dated 11/01/2018 or merit and all proceedings emanating there from.
 - (e) Pass any other order/orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
2. All the three applications are being taken up together as common points are involved and all these have been argued by both the sides together.
3. The above said appeals were filed by Ricoh India Ltd. challenging impugned order dated 11/01/2018 passed by learned Additional Commissioner- OHA while upholding levy of tax, interest and penalty for the assessment year 2009-10, vide assessments dated 31/03/2014 framed under Delhi Value Added Tax Act (hereinafter referred to as DVAT Act).
4. For the purpose of entertaining of the appeals, vide order dated 04/06/2018, this Appellate Tribunal directed the applicant-

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appellant-assessee to deposit 20% of the disputed amount of tax and interest; 10% of the disputed demand of penalty in respect of each month, within a period of 30 days.

Subject to compliance with the said order, the appeals were scheduled to be listed for hearing on merits, but, this is a case where Ricoh India Ltd. did not comply with the order.

5. In the Review application, recently filed on 25/07/2023 M/s Minosha India Ltd., has alleged that Ricoh India Ltd.-dealer-assessee filed an application dated 25/01/2018 before National Company Law Tribunal, u/s 10 of IBC, 2016; that said application was admitted and thereupon moratorium order dated 14/05/18 was passed u/s 14 of IBC and Interim Resolution Professional was appointed.

Further, it has been alleged that in terms of order dated 14/05/2018, proceedings before this Appellate Tribunal could not continue because of the prohibition in terms of the said order.

6. On the aforesaid ground, M/s Minosha India Ltd.- applicant has prayed for review and modification of the order dated 04/06/2018.

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Revenue has opposed the above said review application No. 285/23 by pleading that the order, sought to be reviewed, was passed way back in the year 2018 and this application has been filed as a counter blast to application-M.A No. 611/23 filed on behalf of the Revenue, seeking dismissal of the appeal due to non-compliance with the order u/s 76(4) of DVAT Act.

Another objection raised on behalf of the Revenue is that applicant Minosha India Ltd. is not yet a party before this Appellate Tribunal and that numerous applications earlier filed by Minosha India Ltd. were got dismissed as withdrawn.

Further, the Revenue has pleaded that provision pertaining to review of an order comes into application when there is some glaring error apparent on record, but herein, this application has been filed without any legal basis and without pointing out any error or mistake in the order.

Further, it has been pleaded on behalf of the revenue that review application has been filed beyond the prescribed period of limitation of 60 days, and as such, same is hopelessly barred by limitation, particularly, when the applicant was fully aware of the entire situation, facts and circumstances. It has

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also been pleaded that no application seeking condonation of delay has been filed seeking review of the order.

Another plea put forth in the reply is that having regard to the sequence of events from the date of filing of application before NCLT onwards, Minosha India Limited has withheld various facts and misled the court.

Further, pleading that the amount required to be deposited by way of pre-deposit, having not been deposited, applicant cannot claim that the said amount is not recoverable.

Accordingly, revenue has prayed for dismissal of the applications.

7. Arguments heard. File perused.
8. Regulation 24 of DVAT (Appellate Tribunal) Regulations, 2005 provides that an application for review of order may be filed within 60 days from the date of service of the order.

As mentioned above, the order sought to be reviewed was passed by this Appellate Tribunal on 04/06/2018. Present application having been filed on 25/07/2023 is palpably barred by limitation, as rightly submitted by counsel for the Revenue. At the time, the order was passed, Ricoh India Ltd. was the

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appellant-applicant. Ricoh India Pvt. Ltd. did not file any application seeking review of the order. Minosha India Ltd. has not filed any application seeking condonation of delay in filing the review application.

As is available from order dated 15/07/2019, for the first time, it was brought to the notice of the Appellate Tribunal that matter was pending before Hon'ble NCLT, and on this ground adjournment was sought on behalf of the appellant- Ricoh India Pvt. Ltd.

Thereafter, it was on 07/04/2021 that for the first time, CA Sh. Varun Jain appeared on behalf of M/s Minosha India Ltd. and brought to the notice of the Appellate Tribunal that on approval of resolution plan in proceedings under Insolvency and Bankruptcy Code (in short 'IBC'), Ricoh India Ltd. got merged with Minosha India Ltd., and while so submitting, sought adjournment to file an application for substitution.

On 24/09/2021, an application was filed on behalf of the Minosha India Ltd. informing the Appellate Tribunal about change of name of the company from M/s Ricoh India Ltd. to Minosha India Ltd., but the fact remains that on behalf of the

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M/s Minosha India Ltd., no application seeking review of the order dated 04/06/2018, was filed.

9. It may be mentioned here that the objections filed by Ricoh India Ltd. u/s 74 of DVAT Act were disposed of by learned OHA on 11/01/2018.
10. Learned CA for Minosha India Ltd. admits that Ricoh India Ltd. had filed application u/s 10 of IBC before Hon'ble NCLT on 25/01/2018 and present set of appeals No. 429-454/17^{came} to be presented before this Appellate Tribunal on 28/03/2018 i.e. even after filing of the application u/s 10 IBC before Hon'ble NCLT.

Nowhere in the memorandum of appeal, the dealer- Ricoh India Ltd. mentioned about filing of the above said application u/s 10 IBC before Hon'ble NCLT.

Even in the application u/s 76(4) of DVAT Act, the factum of filing of application u/s 10 of IBC was not mentioned.

Application u/s 76(4) of DVAT Act was argued on 03/05/2018 and the matter was postponed to 04/06/2018 for orders. Learned CA for Minosha India Ltd. admits that in the meanwhile on 14/05/2018, moratorium was declared by Hon'ble NCLT vide order, passed u/s 14 of IBC. Admittedly,

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Ricoh India Ltd. did not challenge the order dated 04/06/2018. So, it can be said that Ricoh India Ltd. accepted the order dated 04/06/2018. Accordingly, Ricoh India Ltd. was required to mention in the application u/s 10 IBC not only about the proceedings already concluded by the Assessing Authority and by learned OHA, but also about the statutory liability to pay 20% of the demand of tax and 10% of the demand of penalty in respect of each quarter of the concerned year.

There is nothing in the order date 04/06/2018 passed on application u/s 76(4) of DVAT Act that on behalf of Ricoh India Ltd. its counsel brought to the notice of the Appellate Tribunal that the above said application u/s 10 of IBC had been filed or that order of moratorium had been passed on 14/05/2018 and that this Appellate Tribunal could not continue with these proceedings, in view of provisions of section 14 of IBC.

The fact remains that Ricoh India Ltd. wilfully concealed from this Appellate Tribunal, factum of filing of application u/s 10 of IBC before Hon'ble NCLT and passing of order of moratorium u/s 14 of IBC and also wilfully omitted to mention before ^{Hon'ble} ~~the~~ NCLT, about the proceedings under DVAT Act which already stood concluded by the Assessing

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Authority and by learned OHA and the statutory liability under section 76(4) of DVAT Act.

11. As per order dated 28/11/2019 passed by Hon'ble NCLT on the application u/s 10 of IBC that in the relevant columns meant for "statutory dues" Ricoh India Ltd. did not mention about the 'statutory dues' as a result of proceedings under DVAT Act conducted by the Assessing Authority (as per assessments dated 31/03/2014 u/s 32 & 33 of DVAT Act) and the dismissal of the objections u/s 74 of DVAT Act by learned OHA. Learned CA representing Minosha India Ltd. admits this fact.

So, the fact remains that Ricoh India Ltd. wilfully concealed the above said facts even while filing application u/s 10 of IBC.

12. Minosha India Ltd. has not been able to bring on record any material to suggest that Ricoh India Ltd. ever brought to the notice of IRP in the proceedings under IBC the above said facts regarding statutory liabilities, framing of assessments and the dismissal of the objections filed by it under DVAT Act.

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Had Ricoh India Ltd. brought said facts to the notice of IRP, he would have taken steps for getting the application u/s 10 of IBC amended so that requisite facts could be pleaded therein and appropriate notice could be issued to the Department of Trade & Taxes, Govt. of NCT, Delhi for raising of claim before the IRP.

In the given circumstances, service of notice by way of public announcement of CIRP u/s 15 of IBC in the newspapers, mentioned in order dated 28/11/2019, is of no help on the issue.

13. In the course of arguments, learned CA representing Minosha India Ltd. has candidly submitted that for the first time, notice came to be issued to the Department of Trade & Taxes, Govt. of NCT, Delhi on 23/12/2019 i.e. after the approval of the resolution plan vide order dated 28/11/2019 passed by Hon'ble NCLT.

So, the fact remains that Ricoh India Ltd. wilfully concealed the above said facts from the IRP.

14. In **G. Mishra & Sons v. Edelweiss Asset Reconstrn. Co. (SC)**, Civil Appeal No. 8129 of 2019 decided on 13/04/2021 wherein it has been held as under:

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"Once a resolution plan is duly approved by the Adjudicating Authority under section 31(1) of the Insolvency and Bankruptcy Code, 2016, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the Adjudicating Authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim, which is not part of the resolution plan.

Insertion of the words "including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to who statutory dues are owed", by section 7 of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 to section 31 of the Code is clarificatory and declaratory in nature and will be effective from the date on which Code came into effect. Consequently all dues including statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for a period prior to the date on which the Adjudicating Authority grants its approval under section 31 of the Code could be continued."

15. Indisputably, feeling aggrieved by order dated 28/11/2019 passed by Hon'ble NCLT, Revenue filed appeals before Hon'ble NCLAT. Vide order dated 01/11/2022 Hon'ble NCLAT dismissed the Company Appeals (AT)(INS) No. 1277 of 2022 being barred by limitation, and also rejected applications i.e I.A. No. 3934, 3894 of 2022 which were filed seeking condonation of delay in filing of the said appeals.

In view of the above decision by the Hon'ble Apex Court, the resolution plan having been approved by Hon'ble NCLT, and there being no mention of any statutory dues towards



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Department of Trade & Taxes, Govt. of NCT, Delhi in the application u/s 10 of IBC or in ^{the proceeding leading to approval of} the resolution plan, Minosha India Ltd., which was declared the successful resolution applicant, cannot be called upon to discharge liability, u/s 76 (4) of DVAT Act, which was earlier the liability of Ricoh India Ltd., inspite of the fact of wilful concealment thereof by Ricoh India Ltd. and the person concerned, in the applications and in the proceedings under IBC and also wilful concealment thereof from this Appellate Tribunal.

Conclusion

16. No doubt, as rightly contended by counsel for the Revenue, the prayer made by M/s Minosha India Ltd. seeking review deserves to be dismissed, being barred by limitation, but, this Appellate Tribunal finds that the application No. 285/23 deserves to be allowed because of the order dated 28/11/2019 passed by Hon'ble NCLT.

Accordingly, exercising powers u/s 76 (13) of DVAT Act, the order u/s 76(4) of DVAT Act is reviewed by this Appellate Tribunal suo-moto. It is ordered accordingly, and consequently, while dismissing M.A. No. 611/22 filed on

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behalf of the Revenue, I proceed to dispose of the next application i.e. M.A. No. 139/23.

M.A. No. 139/23

17. In M.A. No. 139/23, applicant-Minosha India Ltd. claims that all the debts (including tax dues and other like debts due to Government Authorities) of the corporate debtor to the extent stated in the Resolution Plan have been duly discharged by the Resolution Applicant, under the supervision of the monitoring committee.

18. Indisputably, as per case of Minosha India Ltd., M/s Ricoh India Ltd. (initially the appellant) was registered under DVAT Act and CST Act, while engaged in the business of office-imaging-equipment, production, print solutions, document-management-systems and IT services.

Further, it is case of the applicant that Ricoh India Ltd., during the year 2009-10, sold different types of multi-functional printers (MFPs) while charging VAT at the rate of 4% and 5%, as the goods were classifying the above said devices under Entry No. 41(A), serial No. 3 of Third Schedule of DVAT Act, as said MFPs were taxable at the rate of 4% until 12/01/2010 and further at the rate of 5%.

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As further alleged in the objections filed against the default assessment of tax and interest as well as penalty, use of MFPs was elaborated to put forth that the same were taxable as computer printer, having regard to their dominant use i.e. computer printing, and as such, there was no justification to cover the MFPs by the Residuary Entry of Third Schedule. However, learned OHA dismissed the objections.

As further alleged in the application, Ricoh India Ltd. filed appeal -STA No. 6/2010 dated 04/05/2012, and the Hon'ble High Court observed that the principal/dominant object of the machine had to be seen whether it performs functions of an input and output unit of an Automatic Data Processing Machine (ADPM).

Further, it has been alleged in the application that on the basis of brochures, Ricoh India Ltd. established the above said nature of the devices.

Since, OHA dismissed the objections, Ricoh India Ltd. filed appeal accompanied by application u/s 76(4) of DVAT Act.

19. As already noticed above, Ricoh India Ltd- assessee filed an application dated 25/01/2018, u/s 10 IBC for insolvency. Said application was admitted by the Hon'ble National Company Law Tribunal vide its order dated 14/05/2018 and moratorium

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order came to be issued and a public announcement is stated to have been made.

20. It is also case of the applicant that CIRP got concluded in terms of order dated November 28, 2019, passed by Hon'ble NCLT, Mumbai Bench, whereby the Resolution Plan submitted by Mrs. Rekha Rakesh Jhunjunwala and Mr. Kalpraj Dharamshi (Successful Resolution Applicants) representing the bidding company, which ultimately came to be registered as Minosha India Ltd., was approved.

As further claimed by the applicant, on 23/12/2019 Delhi VAT Authorities were apprised by the applicant about the order dated 28/11/2019, passed by the Hon'ble NCLT.

In view of the above said facts learned CA for Minosha India Ltd. has contended that as per the order dated 28/11/2019, amount of VAT due as per order of learned OHA shall get extinguished and not recoverable.

21. At this stage, once again, reference is made to decision in **G. Mishra & Sons'** case (supra), wherein it has been held as under:

"Once a resolution plan is duly approved by the Adjudicating Authority under section 31(1) of the Insolvency and Bankruptcy Code, 2016, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government,

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any State Government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the Adjudicating Authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim, which is not part of the resolution plan.

Insertion of the words “including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to who statutory dues are owed”, by section 7 of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 to section 31 of the Code is clarificatory and declaratory in nature and will be effective from the date on which Code came into effect. Consequently all dues including statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for a period prior to the date on which the Adjudicating Authority grants its approval under section 31 of the Code could be continued.”

22. Indisputably, feeling aggrieved by order dated 28/11/2019 passed by Hon'ble NCLT, Revenue filed appeals before Hon'ble NCLAT. Vide order dated 01/11/2022 Hon'ble NCLAT dismissed the Company Appeals (AT)(INS) No. 1277 of 2022 being barred by limitation, and also rejected applications i.e I.A. No. 3934, 3894 of 2022 which were filed seeking condonation of delay in filing of the said appeals.

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23. In view of the above decision by Hon'ble Apex Court, the resolution plan having been approved by Hon'ble NCLT, and there being no mention of the statutory liability towards Department of Trade & Taxes, Govt. of NCT, Delhi or about the statutory liability as per order dated 04/06/2018 in the proceedings before Hon'ble NCLT or in the ^{proceedings leading to approval of} resolution plan, Minosha India Ltd., which was declared the successful resolution applicant and incorporated as such, cannot be called upon to discharge said liability, under DVAT Act, of Ricoh India Ltd. or to pay to the Department of Trade & Taxes, Govt. of NCT, Delhi, any of the said statutory liabilities, inspite of the fact of wilful concealment thereof by Ricoh India Ltd. in the application, in the proceedings under IBC and also wilful concealment thereof from IRP, having regard to the decision by Hon'ble Apex Court that on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim, which is not part of the resolution plan.

The contention raised by learned counsel for the Revenue that as per the above decision when these proceedings in the form

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of appeal cannot be continued, same deserve to be dismissed, is without merit.

When Hon'ble Apex Court referred to the non-continuation of the proceedings, it means the impugned demands raised by the Assessing Authority and upheld by learned OHA cannot be pursued further by the Department of Trade & Taxes against the successful resolution applicant/Minosha India Ltd., even though Ricoh India Ltd. has got merged with the successful resolution applicant.

Conclusion

24. Consequently, Minosha India Ltd. which has taken over Ricoh India Ltd., on approval of resolution plan by Hon'ble NCLT, is not liable to discharge liability of VAT, interest and penalties in terms of the assessments confirmed by learned OHA.
25. M.A. No. 139/23 is disposed of accordingly.
26. While parting with this order, it is significant to note that Ricoh India Ltd. has been found to have omitted from the application u/s 10 of IBC, ^{and subsequent application} fact regarding statutory liabilities, due from it as per demands raised vide assessments u/s 32 and 33 of DVAT Act, framed by the Assessing Authority and

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upheld by the Objection Hearing Authority, and that too knowing it to be material and the person authorised, who signed and verified the application u/s 10 of IBC submitted before Hon'ble NCLT, deserve to be proceeded against in accordance with law for the offense u/s 77 of IBC(Ricoh India Ltd. having become non-existent on being taken over by Minosha India Ltd.).

27. Section 77 of IBC is reproduced for ready reference:

"77. Punishment for providing false information in application made by corporate debtor. – Where –

- a) A corporate debtor provides information in the application under section 10 which is false in material particulars, knowing it to be false and omits any material fact, knowing it to be material; or
- b) Any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clause (a), such corporate debtor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both."

28. Sub-section (2) of section 236 of IBC provides that no Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.


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29. In view of the provisions of sub-section (2) of section 236 of IBC, matter needs to be brought to the notice of Central Government i.e. Ministry of Corporate Affairs for necessary action in accordance with law. Copy of the order be sent to the Central Government.
30. This Appellate Tribunal also feels that law needs to be amended to deal with and prevent such situations. It is well settled that whenever an order is obtained from any Court or competent Authority by playing fraud, the factum of fraud can be brought to the notice of the competent Authority/ ^{at any stage} for necessary action in accordance with law. After all, as per provisions of Section 447 of the Companies Act concealment of any fact in relation to affairs of a company or any body corporate also amounts to commission of fraud, whether or not there is any wrongful gain or wrongful loss.
31. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 10/08/2023


(Narinder Kumar)
Member (Judicial)

