

(2024) 02 NCLAT CK 0031

National Company Law Appellate Tribunal New Delhi

Case No: Company Appeal (AT) (Ins.) No.1609 Of 2023 & I.A. No. 5814 Of 2023

GMSRA Infracon Pvt. Ltd

APPELLANT

Vs

Shreebhav Polyweaves Pvt. Ltd. &

RESPONDENT

Ors

Date of Decision: Feb. 12, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 79(2)

Hon'ble Judges: Ashok Bhushan, Chairperson; Barun Mitra, Member (T); Arun Baroka, Member (T)

Bench: Full Bench

Advocate: Anup Kumar, Sumit Kansal

Final Decision: Dismissed

Judgement

1. **I.A. No. 5814 of 2023:** This is an application praying for condonation of 14 days' delay in filing the Appeal. Ground taken in the affidavit is that marriage of the drafting counsel has solemnised in first week of December, 2023 due to which delay was caused in preparing the appeal. Cause shown sufficient, delay is condoned. I.A. No.5814 of 2023 is disposed of.

2. Heard learned counsel for the Appellant. This appeal has been filed against order dated 27.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Division Bench, Court-I, by which order I.A. No.205 of 2023 filed by the Appellant, Successful Resolution Applicant has been allowed. The Appellant still aggrieved by the order has come up in this Appeal.

3. Learned counsel for the Appellant submits that in Para 14 of the order with regard to other reliefs and concessions sought, the Adjudicating Authority has directed the

Appellant to approach the concerned statutory authority for those concessions and reliefs. Learned counsel for the Appellant submits that the Appellant was entitled to carry forward its accumulated losses as per Section 79(2) of the Income Tax Act and its resolution plan has included all these aspects. The Adjudicating Authority had already issued notice to the Income Tax Department and heard.

4. We have considered the submissions of learned counsel for the Appellant and perused the record.

5. In Para 14 of the order, following has been held by the Adjudicating Authority:

"14. In view of the above, all unpaid liabilities and claims that are not filed with the RP before the approval of the resolution plan and those which are not included in the said resolution plan would stand extinguished. The unpaid liabilities so extinguished together with extinguished existing share capital would be converted to "Capital Reserve". The accumulated losses as per the balance sheet will have to be set off first against such capital reserve and the remaining losses, if any, can be considered in accordance with the provisions of section 79(2) of the Income Tax Act. For this purpose, the applicant or the successful resolution applicant can through a separate application apply before this Adjudicating Authority with a notice to the Principal Chief Commissioner of Income Tax having jurisdiction for allowing carry forward losses, if any, under the provisions of section 79(2) of the Income Tax Act.

As far as other reliefs and concessions as sought by the resolution applicant, we direct the said successful resolution applicant to approach the concerned statutory authority for those concessions and those authorities will consider the same in accordance with the relevant provisions of law keeping in view the intent and spirit of the IBC."

6. Learned counsel for the Appellant submitted that the benefit of Section 79(2) for carry forward the accumulate losses has to be extended to the Appellant, however, the Adjudicating Authority has issued direction to the Successful Resolution Application to approach the concerned statutory authority for the concessions.

7. We are of the view that in event the Appellant is entitled for benefit of Section 79(2) to carry forward accumulated losses, it shall be open for the Appellant to file an appropriate application before the competent jurisdictional Income Tax Authority to claim the benefit. We are of the view that no error has been committed by the Adjudicating Authority by directing the Successful Resolution Application to approach the concerned statutory authority.

8. In so far as, other reliefs and concessions, the Adjudicating Authority has allowed the application and direction has been issued in Para 13 and14. In fact, virtually, the

application has been allowed by the Adjudicating Authority, hence, we do not see any reason to entertain this Appeal challenging the second part of the order as contained in Para 14.

9. Learned counsel for the Appellant lastly contends that unpaid liabilities have been extinguished together with share capital would be converted to "Capital Reserve". The said observations of the Adjudicating Authority were with regard to the Resolution Plan, as was approved.

10. The directions are only for the purpose that the Corporate Debtor may carry on the business in accordance with law. We do not find any ground to interfere in the impugned order. Appeal is dismissed.