

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13042 of 2022

M/s Isolux Corsan India Engineering and Construction Private Limited through its Liquidator CA Rajeev Bansal, aged about 40 years, S/o Shri Lakshmi Narayan Bansal, R/o 2163A, Shri Nagar Colony, Jagadhri, Yamunanagar, Haryana - 135003.

... .. Petitioner/s

Versus

1. The State of Bihar through its Commissioner-Cum-Principal Secretary, Commercial Tax Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna - 800015.
2. The Commissioner-cum-Principal Secretary, Commercial Tax Department, Government of Bihar Vikas Bhawan, Bailey Road, Patna- 800015.
3. The Joint Commissioner of Commercial Taxes (JCST), GST Department, Sasaram Circle, Sasaram, Bihar - 821115.
4. The Deputy Commissioner of Commercial Taxes (DCCT), GST Department, Sasaram Circle , Sasaram, Bihar - 821115.
5. The Accountant General (Audit) Bihar, Patna, Indian Audit and Accounts Department, Office of the Accountant General (Audit), Bihar Mahalekhakar Bhawan, Birchand Patel Marg, R-Block, Patna, Bihar-800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Mishra, Advocate Ms. Nivedita Chauhan, Advocate Mr. Kunal Tiwary, Advocate Ms. Komal Singh, Advocate Ms. Jagriti Dosi, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-08-2024

The writ petition is filed by an assessee which is under liquidation by orders of the National Company Law



Tribunal (for brevity 'NCLT') Chandigarh Bench, Chandigarh. The Liquidator who represents the assessee has been appointed as per Annexure-2 order dated 06.02.2020 passed by the NCLT. The Liquidator representing the assessee has come before this Court with the writ petition challenging the re-assessment for the year 2012-2013; translated copy of which order is produced as Annexure-C along with the counter affidavit of Respondent Nos. 3 and 4.

2. Learned Counsel for the petitioner contends that the Liquidator was never issued with notice of re-assessment and could not participate in the re-assessment. There are also claims of refund which are being prosecuted for the years 2013-2014 to 2015-2016 before the appropriate authority. In such circumstance, there should be a proper assessment proceeding taken with the participation of the petitioner. It is also pointed out from Section 33 (5) of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC') that when a liquidation order has been passed, no suit or other legal proceeding shall be initiated instituted by or against a corporate debtor. Reference is also made to *ABG Shipyard Liquidator v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472*, wherein it has been categorically stated that though the Taxes Department would be



entitled to make an assessment or determine the quantum of duty, there could be no recovery made; for which the Liquidator will have to be approached with a proper claim after the assessment is finalised.

3. The learned Government Advocate, on the other hand, submits that the order itself indicates that notices were sent on e-mail and even the Advocate who was prosecuting the refund application before the Tax Authorities was given notice, who had informed the respondents that the company is in liquidation. It is also pointed out from the judgment in ***ABG Shipyard Liquidator*** (*supra*) that the clear direction is that only when there is a moratorium under Section 14, there could be a stay of recovery. Since the liquidation has commenced, there is no further moratorium, is the contention.

4. With respect to the claim for recovery we have to only look at the operative portion of ***ABG Shipyard Liquidator*** (*supra*) and we extract from Paragraph No. 57:

57. On the basis of the above discussions, following are our conclusions:

57.1. Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate



recovery of dues by means of sale/confiscation, as provided under the Customs Act.

57.2. After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

57.3. In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.

5. It has been categorically stated that the moratorium spoken of under the IBC is either as per the terms of Section 14 or Section 33(5) and that in such circumstance there can be no recovery made though the authorities would be entitled to assess or determine the quantum of duties or taxes.

6. In the present case, admittedly, in the case of the assessee the liquidation proceedings had commenced by Annexure-2 order dated 06.02.2020 and the Liquidator was appointed. As we saw from Annexure-C, the notices were all issued to the e-mail of the assessee after the Liquidator was appointed which makes it clear that the Liquidator was never informed of the re-assessment proceedings. In such circumstances, Annexure-C suffers from the defect of the



assessee having not been heard.

7. In the present case, initially the State had also objected to the filing of the writ petition, which was without getting an approval from the NCLT. When the objection was raised, the Liquidator had approached the NCLT for *ex post facto* approval which was denied. An appeal to the National Company Appellate Tribunal, however, found favour with the contention and declared the writ petition filed to be one with proper approval as granted by the Appellate Tribunal.

8. On the totality of the circumstances, we are of the opinion that the Liquidator should be noticed and participated in the re-assessment proceedings. Only for violation of principles of natural justice, we set aside the Annexure-C order without going into the merits of the matter. The Liquidator shall appear before the Assessing Officer on 21.08.2024 after filing proper objections. The assessment order at Annexure-C itself shall be considered as a notice for re-assessment. After filing the objection, the Assessing Officer shall hear the matter on the same day or any other date with intimation to the Liquidator, who is representing the assessee. The matter shall be considered on merits and an assessment order passed, which again has to be enforced only by filing a proper claim before the Liquidator and



going by the decision in *ABG Shipyard Liquidator (supra)*.
Necessarily the demand notice with respect to Annexure C
assessment order for 2012-2013 would stand quashed. As far as
the refund for the years 2013-2014 to 2015-2016, we are not
called upon to consider the issue at all.

9. We hence allow the writ petition with the above
directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

