

IN THE HIGH COURT OF KARNATAKA  
AT BENGALURU

DATED THIS THE 16<sup>TH</sup> DAY OF DECEMBER 2021

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

**WRIT PETITION NO.17303/2021 (T-RES)**

**BETWEEN:**

Associate Décor Limited  
Plot No.1, Phase 4  
KIADB Industrial Estate  
Malur  
Kolar District-563130  
Represented by the Resolution Professional  
Mr. Alok Kailash Saxena

... Petitioner

(By Sri T. Suryanarayana, Senior Counsel for  
Sri Jitendra, C.P., Advocate)

**AND:**

Deputy Commissioner of  
Commercial Taxes, (Audit)-5.7  
6<sup>th</sup> Floor, B-Block, VTK-2  
Rajendranagar, Koramangala  
Bengaluru-560 047

... Respondent

(By Sri Hema Kumar, AGA)

This Writ Petition is filed under Articles 226 and 227 of the  
Constitution of India, praying to:

- (i) Quashing the Notice bearing dated 20.05.2021 issued by the  
Respondent under Rule 101(4) of the KGST Rules and CGST Rules  
read with Section 65 of the KGST Act and CGST Act (Annexure-B)  
for the period July 2017 to March 2018;

- (ii) Quashing the Revised Intimation Notice bearing dated 29.06.2021 issued by the Respondent under Rule 101(4) of the KGST Rules and CGST Rules read with Section 65 of the KGST Act and CGST Act (Annexure-F) for the period July 2017 to March 2018;
- (iii) Quashing the Audit Enquiry dated 22.07.2021 issued by the Respondent (Annexure-K) for the period July 2017 to March 2018;
- (iv) Quashing the Audit Report bearing dated 22.06.2021 issued by the Respondent under Section 65(6) of the KGST Act and CGST Act (Annexure-L) for the period July 2017 to March 2018;
- (v) Quashing the intimation issued in Form GST DRC-01A bearing Case ID No.ASSMT/01/2021-22 dated 01.09.2021 issued by the Respondent under Section 74(5) of the KGST Act and the CGST Act (Annexure-N);
- (vi) Quashing the notice dated 22.10.2021, in GST Form ADT - 01, issued under Section 65 of the KGST Act and CGST Act, for the financial year 2018-2019 (Annexure-Q);
- (vii) Quashing the notice dated 22.10.2021, in GST Form ADT - 01, issued under Section 65 of the KGST Act and CGST Act, for the financial year 2019-2020 (Annexure-R);
- (viii) Quashing the Show Cause Notice dated 15.11.2021, issued by the Respondent under Section 74 read with Section 65 read with Section 50 and Section 122 of the KGST Act and CGST Act and Section 6 of the IGST Act, 2017 (Annexure-T); and
- (ix) Pass such other or further order as this Hon'ble Court may deem fit in the facts and circumstances of the case, in the interests of justice and equity.

This petition coming on for orders, this day, the Court made the following:

### **ORDER**

In this petition, petitioner has sought for the following reliefs:

- (i) Quashing the Notice bearing dated 20.05.2021 issued by the Respondent under Rule 101(4) of the KGST Rules and CGST Rules read with Section 65 of the KGST Act and CGST Act (Annexure-B) for the period July 2017 to March 2018;*
- (ii) Quashing the Revised Intimation Notice bearing dated 29.06.2021 issued by the Respondent under Rule 101(4) of the KGST Rules and CGST Rules read with Section 65 of the KGST Act and CGST Act (Annexure-F) for the period July 2017 to March 2018;*
- (iii) Quashing the Audit Enquiry dated 22.07.2021 issued by the Respondent (Annexure-K) for the period July 2017 to March 2018;*
- (iv) Quashing the Audit Report bearing dated 22.06.2021 issued by the Respondent under Section 65(6) of the KGST Act and CGST Act (Annexure-L) for the period July 2017 to March 2018;*
- (v) Quashing the intimation issued in Form GST DRC-01A bearing Case ID No.ASSMT/01/ 2021-22 dated 01.09.2021 issued by the Respondent under Section 74(5) of the KGST Act and the CGST Act (Annexure-N);*
- (vi) Quashing the notice dated 22.10.2021, in GST Form ADT - 01, issued under Section 65 of the KGST Act*

*and CGST Act, for the financial year 2018-2019 (Annexure-Q);*

*(vii) Quashing the notice dated 22.10.2021, in GST Form ADT - 01, issued under Section 65 of the KGST Act and CGST Act, for the financial year 2019-2020 (Annexure-R);*

*(viii) Quashing the Show Cause Notice dated 15.11.2021, issued by the Respondent under Section 74 read with Section 65 read with Section 50 and Section 122 of the KGST Act and CGST Act and Section 6 of the IGST Act, 2017 (Annexure-T); and*

*(ix) Pass such other or further order as this Hon'ble Court may deem fit in the facts and circumstances of the case, in the interests of justice and equity.*

2. Heard Sri T. Suryanarayana, learned Senior Counsel for the petitioner and Sri Hema Kumar, learned AGA for the respondent and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the documents produced by the petitioner, learned Senior counsel for the petitioner invited my attention to the material on record including the amended petition and subsequent documents in order to point

out that despite the petitioner replying to the notices issued by the respondent and specifically intimating the respondent that no proceedings against the petitioner can be continued in view of the moratorium declared by the National Company Law Tribunal (for short NCLT) Bengaluru Bench, Bengaluru against the petitioner on 26.10.2018 thereby initiating corporate insolvency resolution process against the petitioner, all suits, proceedings, etc. initiated against the petitioner cannot be continued till the moratorium is lifted in accordance with the Insolvency and Bankruptcy Code, 2016 (for short the 'IBC'), the respondent is illegally and arbitrarily attempting to continue the proceedings against the petitioner which are without jurisdiction or authority of law and contrary to Section 14 of the IBC and as such, the petitioner is before this court by way of the present petition. In support of his contention learned Senior Counsel placed reliance upon the following decisions:

- (i) *Ghanashyam Mishra & Sons Private Limited vs. Edelweiss Assets Reconstruction Company Limited & others, 2021 SCC Online SC 313;*
- (ii) *P. Mohan Raj and others vs. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258;*

- (iii) *Principal Commissioner of Income Tax vs. Monnet Ispat and Energy Limited, (2018) 304 CTR (DEL) 234;*
- (iv) *Principal Commissioner of Income Tax vs. Monnet Ispat and Energy Limited, SLP No. 6483/2018 dated 10.08.2018;*
- (v) *Dishnet Wireless Limited vs. Deputy Commissioner of Income Tax, W.P.No.24097/2018 dated 18.12.2018*

4. *Per contra*, learned AGA for the respondent submits that the embargo fixed under Section 14 of the IBC is only as regards recovery proceedings against the petitioner and vide interim order dated 29.09.2021, this court has permitted the respondent to proceed with assessment/ adjudication proceedings which are permissible in law and consequently, there is no merit in the petition and that the same is liable to be dismissed. It is also submitted that in the event the instant proceedings initiated by the respondent against the petitioner are quashed, the proceedings to be initiated by the respondent later after lifting of the moratorium would be barred by limitation resulting in irretrievable loss and hardship to the respondent and on this ground also, the petition is liable to be dismissed.

5. By way of reply, the learned Senior Counsel for the petitioner submits that having regard to the specific words 'proceedings' employed in Section 14 of the IBC in relation to any court, tribunal, arbitration panel or other authority, the impugned proceedings initiated against the petitioner by the respondent - department are also to be suspended/stayed/kept in abeyance till completion of the Corporate Insolvency Resolution Process (CIRP) and lifting of the moratorium. It is also submitted that the apprehension of the respondent - State that proceedings to be initiated by the respondent after completion of the CIRP and lifting of the moratorium would be barred by limitation is unfounded in view of the *non-obstante* clause contained in Section 60 (6) of the IBC which excludes the entire period during which the moratorium is in force; so also Section 75 (1) of the Goods and Services Tax Act, 2017 (for short the 'GST Act') also excludes the entire period from 29.09.2021 onwards when this court passed an order of stay up to the date of completion of the CIRP and lifting of the moratorium in the event the impugned proceedings are

quashed by this court. It is therefore submitted that any proceedings to be initiated by the respondent against the petitioner after completion of the CIRP and lifting of the moratorium would be well within limitation in the light of the aforesaid provisions and consequently, the said apprehension voiced by the respondent cannot be made the basis for this court to reject the claim of the petitioner put forth in the present petition.

6. I have given my anxious consideration to the rival submissions and perused the material on record.

7. Before adverting to the rival contentions, it is necessary to extract Section 14 of the IBC which reads as under:

*“14. Moratorium - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*



*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*1[Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the*

*grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.*

*(3) The provisions of sub-section (1) shall not apply to-*  
*(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*

*(b) a surety in a contract of guarantee to a corporate debtor.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*

8. A plain reading of Section 14 of the IBC will clearly indicate that there is a complete/total embargo/bar to initiate and continue proceedings against the petitioner before any other authority including the respondent - authority also during the pendency of proceedings before the NCLT and appeal(s) to be filed against the same, if any, when the moratorium/CIRP is in force and has not been lifted; it is relevant state that neither the words 'proceedings' nor 'authority' have been defined under the IBC and consequently

giving the said words their plain grammatical meaning, the only inference that arises from a reading of Section 14 would be that the said provision is an all pervasive and omnibus provision which includes and encompasses proceedings initiated by the respondent - department against the petitioner also. Under identical circumstances, in **Monnet Ispat's** case supra, in proceedings initiated by the Income Tax Department, a Division Bench of the Delhi High Court held as under:

*1. The Court has heard the learned counsel for both parties. The provisions of the Insolvency and Bankruptcy Code, 2016 ('Code') and, in particular, Section 14 thereof has been perused. It appears to the Court that Section 238 of the Code is categorical that the Code will apply, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 14(1)(a) of the Code states, inter alia, that on the 'insolvency commencement date', the Adjudicating Authority (AA) shall by order declare moratorium for prohibiting "the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority." That the*

*Code will prevail over all other statutes inconsistent therewith has been explained in the recent decision dated 31<sup>st</sup> Aug., 2017 of the Supreme Court in Civil Appeal Nos.8337-8338/2017 (M/s. Innoventive Industries Ltd. v. ICICI Bank).*

*2. In the instant case, the National Company Law Tribunal (NCLT) [which by virtue of Section 5 (1) of the Code is the Adjudicating Authority] has by its order dated 18<sup>th</sup> July 2017 admitted the petition under Section 7 of the Code filed by the SBI against the Respondent Assessee and prohibited, inter alia, “the institution of suits or continuation of pending suits or proceedings” against the Respondent. This would include the present appeal by the I.T. Department (‘Department’) against the order of the Income Tax Appellate Tribunal in respect of the tax liability of the Respondent-Assessee.*

*3. Mr. Asheesh Jain, learned Senior Standing counsel for the Revenue, points out that unlike some of the earlier insolvency statutes the Code does not envisage permission being sought from the NCLT for continuation of the pending proceedings against the Respondent in other fora. In the order dated 18<sup>th</sup> July 2017 it is clear that the moratorium continues “till*

*the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-Section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be.” Consequently, these appeals are disposed of with liberty to the Appellant-Department to revive them subject to the further orders of the NCLT*

The said order of the Delhi High Court was confirmed by the Apex Court in SLP No.6483/2018 dated 10.08.2018.

9. In ***Dishnet’s*** case supra, a learned Single Judge of the Madras High Court, after noticing the decision of the Delhi High Court has held as under:

*“5. It is further stated by the learned counsel for the petitioner-Companies that on 12.03.2018/ 19.03.2018, the National Company Law Tribunal (for short, ‘the NCLT’), Mumbai, had admitted the applications preferred by the petitioners and initiated CIRP against the petitioner-Companies and declared “Moratorium” in terms of Section 14 of the IBC. Since the order has already been passed by the NCLT on 12.03.2018 / 19.03.2018, granting Moratorium by virtue of Section 14 of the IBC, no recovery proceedings could be initiated against the petitioner- Companies’ properties.*

*Moreover, as per Section 14(1)(a) of the IBC, no suit or continuation of pending suits or proceedings shall be initiated against the corporate debtor including execution of any judgment, decree or order in any Court of law, Tribunal, arbitration panel or other authority. Therefore, the learned counsel for the petitioner-Companies prayed that the impugned orders passed by the second respondent taking action including coercive action against the petitioners for recovery of the amount(s), are liable to be interfered with by this Court.*

*6. In support of his submissions, learned counsel for the petitioners also relied on a decision of the Delhi High Court reported in 2017 SCC Online Delhi 12759 (Pr. Commissioner of Income Tax-6 Vs. Monnet Ispat and Energy Limited), wherein it is held by a Division Bench of the Delhi High Court in that case that, the NCLT (which by virtue of Section 5(1) of the IBC is the Adjudicating Authority) has by its order dated 18.07.2017 therein, admitted the petition under Section 7 of the IBC filed by the State Bank of India therein against the respondent-Assessee therein and prohibited inter-alia "the institution of suits or continuation of pending suits or proceedings" against the respondent therein and this would include the appeal filed before the Delhi High Court by the Income Tax Department against the order of the*

*Income Tax Appellate Tribunal (ITAT) in respect of the tax liability of the respondent-assessee therein. Learned counsel for the petitioner-Companies also relied on a decision of the Supreme Court reported in 2018 SCC Online SC 984 (Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Limited), in which the said order of the Delhi High Court was confirmed by the Apex Court and in that case, the Supreme Court, while dealing with Section 238 of the IBC, held that IBC will over-ride anything inconsistent contained in any other enactment including the Income Tax Act, and it was further observed by the Apex Court, while referring to the case of Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co., reported in 2000 (5) SCC 694 that the Income Tax dues, being in the nature of Crown Debts, do not take precedence even over secured creditors, who are private persons.*

*7. In his arguments, learned counsel for the petitioners also submitted that by virtue of Section 238 of the IBC, the provisions of the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Hence, learned counsel for the petitioners submitted that the impugned orders cannot be passed by the second respondent and prayed for quashing*



*the impugned orders passed by the second respondent.*

*8. Learned Standing Counsel appearing for the respondents filed detailed counter affidavits in both the Writ Petitions and submitted that Section 201(1-A)(3) of the Income Tax Act does not refer to either Section 14 or Section 238 of the IBC. Referring to Section 153 of the Income Tax Act, learned Standing Counsel appearing for the respondents stated that when time limit for completion of assessment has been made, it is clear that no order of assessment shall be made under Section 143 or Section 144 of the Income Tax Act at any time after the expiry of 21 months from the end of the assessment year in which the income was first assessable. She further contended that the second respondent, as per the time limit imposed against him, has completed the assessment. Moreover, as alleged by the respondents, the respondents have not proceeded to take any coercive steps for recovery of the demand arrived at in the impugned proceedings after making adjustment of the amounts due to the petitioners as refund. When the respondents are not going to take any coercive measures, and they are going to treat the impugned orders as only intimation of demand, without enforcing the demand and the impugned orders are only the orders passed under Section*

*201(1-A)(3) of the Income Tax Act, and since the financial year of the petitioners is 2010-2011, as per Section 201(1-A)(3) of the said Act, the respondents, before expiry of seven years, namely on or before 31.03.2018, should make an order under Section 201(1) of the said Income Tax Act and in default for failure to deduct the whole or any part of tax from a person who is resident in India, the second respondent, after giving notice, has passed the present impugned orders and since the impugned orders are passed under Section 201(1) and 201(1-A) of the Income Tax Act, it is to be treated only as an intimation of the existing demand sent to the assessee holding PIN, and hence, it cannot be construed as coercive measures being taken against the petitioner-Companies.*

*9. Be that as it may. When there has been an order passed by the NCLT, Mumbai on 12.03.2018 / 19.03.2018, giving Moratorium, the case of the petitioners is governed by Sections 14 and 238 of the IBC, which read as follows:*

*"Section 14: Moratorium: - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any Court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central*

*Government in consultation with any financial sector regulator.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."*

*"Section 238: Provisions of this Code to override other laws:- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

*10. A perusal of the above provisions clearly tells us that once an order of moratorium is granted by the NCLT, the legal fiction under Section 14 of the IBC will come to the rescue of the corporate debtor. Therefore, taking into consideration all the abovesaid provisions of law and also the ratio laid down by the*

*Apex Court in the abovesaid case, as also the Delhi High Court holding that when once the Moratorium is granted by the NCLT, it will continue till the completion of Corporate Insolvency Resolution Process or until it approves the resolution plan under Section 31(1) of the IBC or passes an order of liquidation of corporate debtor under Section 33 of the IBC, as the case may be, the present Writ Petitions shall stand disposed of, directing the respondents to keep the impugned orders in respect of both the petitioners, in abeyance, till the disposal of the proceedings pending before the NCLT, Mumbai and also the further appeal(s), if any that may be filed by any of the parties to these Writ Petitions. No costs. Consequently, W.M.Ps. are closed.”*

10. It is also relevant to state that in ***P. Mohan Raj's*** case supra, a three Judge Bench of the Apex Court has categorically held that the moratorium provision contained in Section 14 of the IBC would include proceedings under Section 138 of the Negotiable Instruments Act also and by token of the same reasoning, proceedings initiated by the respondent under the GST Act would also attract the embargo contained in Section 14 of the IBC.

11. The aforesaid undisputed facts and circumstances and the decisions of the Apex Court, Delhi High Court and Madras High Court, albeit under the Income Tax Act and the Negotiable Instruments Act are clearly applicable to the instant proceedings and under the GST Act also; under these circumstances, as held by the Madras High Court, I am of the considered opinion that in view of the specific embargo/bar contained in Section 14 of the IBC, the instant proceedings initiated by the respondent pursuant to the impugned notices deserve to be stayed/suspended/kept in abeyance till conclusion of the proceedings before the NCLT and appeal(s) to be filed, if any, and only after lifting of the moratorium and completion of the corporation insolvency resolution process.

12. Insofar as the contention urged by the respondent - state with regard to proceedings to be initiated later by the respondent against the petitioner as being barred by limitation is concerned, the said contention cannot be accepted in view of the *non-obstante* clause contained in Section 60 (6) of the

IBC which excludes the entire period during which the moratorium is in force; so also Section 75 (1) of the GST Act also excludes the entire period from 29.09.2021 onwards when this court passed an order of stay up to the date of completion of the CIRP and lifting of the moratorium and as such, even this contention urged by the respondent cannot be accepted.

13. In the result, I pass the following:

**ORDER**

- (i) Petition is hereby ***disposed of***.
- (ii) All proceedings pursuant to the impugned notices, intimations, orders, etc. issued/passed by the respondent against the petitioner are stayed/suspended/ kept in abeyance till disposal of the proceedings before the NCLT, Bengaluru and also further appeal(s), if any, that may be filed by any of the parties and lifting of the moratorium and completion of the corporate insolvency resolution process insofar as the petitioner is concerned.

- (iii) Liberty is reserved in favour of the respondent to continue/initiate proceedings against the petitioner after disposal of the proceedings and lifting of the moratorium and completion of the CIRP as stated supra.
- (iv) Subject to the aforesaid directions, petition stands disposed of.

**SD/-  
JUDGE**

swk