M/S. Shekhar Resorts Limited (Unit ... vs Union Of India on 5 January, 2023

Author: M.R. Shah

Bench: B.V. Nagarathna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8957 OF 2022

M/s. Shekhar Resorts Limited
(Unit Hotel Orient Taj) …Appellant

Versus

Union of India & Ors. …Respondents

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.06.2021 passed by the High Court of Judicature at Allahabad in Writ Tax No.328 of 2021 by which the High Court has dismissed the said writ petition preferred by the appellant herein seeking direction to the respondents for consideration of the case of the petitioner under the scheme “Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019” (hereinafter referred to as the “Scheme of 2019”), the original writ petitioner has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

> That the appellant – company registered with the Service Tax Department was a company engaged in providing hospitality services. The Service Tax Department conducted investigations as to the evasion of service tax by the appellant and issued show cause notices demanding payment of service tax under various categories such as Accommodation in Hotels, Inn, Guest House, Restaurant Services, Mandap Keeper services etc. 2.1 Proceedings under the Insolvency and Bankruptcy Code

(Amendment) Act, 2021 (hereinafter referred to as "IBC") were initiated against the appellant – Company. The NCLT, Delhi vide order dated 11.09.2018 admitted the application filed by the Financial Creditors of the appellant under Section 7 of the IBC. Thus, on and from 11.09.2018 the corporate insolvency resolution process against the appellant commenced and the appellant was subjected to moratorium under Section 14 of the IBC on and from 11.09.2018. The Committee of Creditors constituted as per the provisions of the IBC, in its 15 th meeting, unanimously approved the resolution plan submitted by NCJ Infrastructure Private Limited on 04.06.2019. That thereafter the Scheme of 2019 came to be introduced on 01.09.2019 under Section 125 of the Finance Act, 2019 for availing the benefit of "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019". The appellant acting through its Resolution professional submitted an application within the period prescribed under the Scheme 2019. The applicant – company was issued Form No.1 on 27.12.2019. At this stage, it is required to be noted that the last date for making the application under the Scheme 2019 was 31.12.2019. Thus, Form No.1 was issued within the prescribed time limit and the tax dues were computed by the appellant as per the Scheme, 2019. That thereafter Form No.3 was issued by the Designated Committee on 25.02.2020 determining the amount due and payable under the Scheme by the appellant. It appears that as per the said statement for payment of tax dues, the appellant was required to pay Rs.1,24,28,500/-.

Under the Scheme the appellant/assessee was required to make the payment as per Form No. 3 within a time period of 30 days. However, in view of the COVID-19 Pandemic, the time to make the payment was extended by the Government upto 30.06.2020.

2.2 That the NCLT approved the Resolution Plan of the successful Resolution applicant - NCJ Infrastructure Private Limited vide order dated 24.07.2020. Thus, on approval of the Resolution Plan by the NCLT the moratorium period came to an end, with the closure of the insolvency proceedings on 24.07.2020. Subsequent to the acceptance of the Resolution Plan by the NCLT, the appellant wrote to the successful resolution applicant and the Commissioner, CGST and Central Excise, Agra intimating them that the resolution process under the IBC had come to an end and that the appellant is ready and willing to make full amount of Rs.1,24,28,500/- as ascertained by the Designated Committee in Form No.3. Vide communication dated 09.10.2020 to the Assistant Commissioner, the appellant explained that the settlement amount under the Scheme, 2019 could not be paid by the appellant before 30.06.2020 due to the legal moratorium imposed upon the company and sought permission to pay the due amount. The Joint Commissioner, Agra vide letter dated 19.10.2020 intimated the appellant that the last date for payment under the Scheme was 30.06.2020, which could not be extended. Consequently, the request of the appellant was rejected. Since the appellant could not obtain permission for payment of the dues post the lifting of the moratorium, the appellant approached the High Court by way of Writ Tax No.328 of 2021. By the impugned judgment and order the High Court has dismissed the said writ petition on the grounds that (i) the High Court shall not issue a direction contrary to the Scheme; (ii) the relief sought cannot be granted as the Designated Committee under the Scheme is not existing.

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original writ petitioner – appellant has preferred the present appeal.

3. Ms. Charanya Lakshmikumaran, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the Hon'ble High Court has seriously erred in dismissing the writ petition and not directing the authority to accept the amount due and payable under the Scheme, 2019.

3.1 It is submitted that the Hon'ble High Court has erred in holding that the Designated Committee does not exist. It is submitted that the Designated Committee under the Scheme was formed as per Rule 5 of the Scheme, 2019. The Designated Committee consists of either the Principal Commissioners, Commissioners, Additional Commissioners, Joint Commissioners or Deputy Commissioners of the Central Excise and Service Tax depending on the tax amount involved in the matter. It is submitted that in the present case, the Designated Committee comprised of the Joint Commissioner and the Commissioner who are officers associated with the offices of Respondent nos.3 and 4. That the Designated Officers continue to act as the Designated Committee under the Scheme till the completion of the proceedings under the Scheme.

3.2 It is submitted that the Designated Committee under the Scheme is being constituted on a need basis to comply with the orders of the courts across the country. That in many cases the Designated Committee rejected the applications under the Scheme, 2019 erroneously and the different courts set aside the decisions of the Designated Committee after 30.06.2020 and directed the Designated Committee to consider the case of the respective applicants under the Scheme, 2019. It is submitted that to reconsider the cases pursuant to the orders passed by the courts/High Courts, the CBEC issued the instructions dated 17.03.2021 allowing for manual processing of declarations under the Scheme by the respective Designated Committees. It is submitted that therefore even after 30.06.2020 the respective Designated Committees carried out their functions under the Scheme, however by manual processing. It is submitted that therefore the reasoning given by the Hon'ble High Court that the Designated Committees are not in existence after 30.06.2020 and therefore the appellant is not entitled to any relief, may not be accepted, as even after 30.06.2020 and even as per the instructions issued by the CBEC, the respective Designated Committees continued to function and process the declarations manually.

3.3 It is further submitted by learned counsel appearing on behalf of the appellant that in the instant case the Hon'ble High Court has not properly appreciated the cause for which the appellant could not deposit the amount under the Scheme 2019 on or before 30.06.2020. It is submitted that at the relevant time and more particularly at the time when the Form No.3 was issued and even during the period under the Scheme 2019, the appellant was subjected to the rigor of the provisions of the IBC by virtue of the moratorium period which ended on 24.07.2020 when the NCLT approved the Resolution Plan. It is submitted that in the instant case, the appellant bonafidely could not deposit the settlement due, on or before 30.06.2020 on account of operation of law. It is next submitted that during the moratorium period, no payment could have been made as per the provisions of the IBC. It is contended that if any payment would have been made during the mortarium period the same would have been in breach of the provisions of the IBC. It is submitted that as per the Resolution

Plan accepted during the insolvency proceedings, the Resolution Applicant was required to deposit all statutory dues (including service tax dues) within 6 months from the effective date into an escrow account. That as per the Resolution Plan, payment to escrow account shall be treated as effective payment to the relevant Operational Creditors. It is further contended that in this case, effective date is 24.07.2020, the date on which the Resolution Plan was approved by the NCLT. So, Service Tax dues along with other statutory dues were deposited in an escrow account on 08.01.2021 before the expiry of the period of six months. It is accrued that this Hon'ble Court in the case of Principal Commissioner of Income Tax vs. Monnet Ispat & Energy Ltd., (2018) 18 SCC 786 has held that once a moratorium has been enforced, any existing proceeding against the debtor shall stand prohibited. In this regard, it is submitted that the IBC shall have precedence over any inconsistent statutes. 3.4 It is vehemently submitted that in any case, no person can be left remediless due to operation of law. That in the present case, the moratorium period under the IBC was extended from 11.09.2018 to 24.07.2020 due to the COVID-19 pandemic and non-functioning of the NCLT. It is contended that even otherwise, the appellant could not have made any payment during the mortarium period by operation of law and inability to make the payment was owning to the moratorium imposed under the provisions of the IBC. It is urged that therefore, the appellant may not be left remediless when the application under the Scheme 2019 was submitted and processed within time. In support of her above submissions and the relief prayed, learned counsel appearing on behalf of the appellant has heavily relied upon the decisions of this Court in the case of Sunil Vasudeva vs. Sundar Gupta, (2019) 17 SCC 385 (para 31), United Air Travel Services vs. Union of India, (2018) 8 SCC 141 (para 13) and Union of India vs. Asish Agarwak, (2022) SCC Online SC 543 (para

23).

3.5 It is reiterated submitted that the appellant could not make the payment due to legal disability and no one can be expected to do the impossible. Reliance is placed on the decisions of this Court in the case of Gyanichand vs. State of Andhra Pradesh, (2016) 15 SCC 164 (para 11) and Calcutta Iron Merchants Association vs. Commissioner of Commercial Taxes, (1997) 8 SCC 42 (para 5).

3.6 It is submitted that the appellant cannot be prejudiced and/or made to suffer for no fault of the appellant. Reliance is placed on the decision of this Court in Anmol Kumar Tiwari & Ors. vs. State of Jharkhand reported in (2021) 5 SCC

424. Making the above submissions it is prayed to allow the present appeal and direct the respondents to appropriate the payment of Rs.1,24,28,500/- towards settlement dues under the Scheme 2019 and that discharge certificate be issued to the appellant accordingly.

4. While opposing the present appeal, Shri Vikramjit Banerji, learned ASG appearing on behalf of the Union of India has vehemently submitted that in the facts and circumstances of the case no error has been committed by the Hon'ble High Court in dismissing the writ petition and refusing to direct the respondents to accept the payment towards the settlement dues under the Scheme, 2019.

4.1 It is submitted that admittedly the Scheme was valid upto 30.06.2020 and the last date for payment of settlement amount under the Scheme, 2019 was 30.06.2020. That thereafter the

Scheme was closed and even the Designated Committees were also dissolved and therefore as rightly observed by the Hon'ble High Court, the Hon'ble High Court has no jurisdiction to extend the Scheme. It is submitted that if the Scheme is extended it would create many complications. 4.2 It is further submitted that in the present case, admittedly, no payment was made of settlement amount under the Scheme prior to 30.06.2020 and therefore, the prayer of the original petitioner to extend the time limit to make the payment of settlement amount under the Scheme, 2019 was rightly rejected by the Commissioner and the same has rightly not been interfered with by the Hon'ble High Court.

Making above submissions it is prayed to dismiss the present appeal.

5. We have heard the learned counsel appearing for the respective parties at length.

6. At the outset, it is required to be noted and it is not in dispute that the appellant is entitled to the benefit of the settlement under the Scheme, 2019. The Scheme, 2019 came to be introduced on 01.09.2019 and the last date for making the application under the Scheme was 30.12.2019 and in fact, the appellant submitted the application in Form No.1 on 27.12.2019 i.e. before the last date specified for making an application. Under the Scheme, after the Form No.1 is processed the Designated Committee was to scrutinize the same and issue the Final Form No.3 determining the settlement amount which the applicant was required to deposit within a period of one month from the date of receipt of the final determination – Form No.3. That the appellant was issued the Form No.3 on 25.02.2020 and was required to pay the settlement dues on or before 25.03.2020. However, in view of the COVID-19 Pandemic the Government extended the time upto 30.06.2020. Therefore, the appellant was required to deposit the settlement dues on or before 30.06.2020. However, even before the Scheme, 2019 came to be introduced, the appellant was subjected to proceedings under the IBC which commenced on 11.09.2018 when the NCLT admitted the application under Section 7 of the IBC. Thus, the moratorium under the IBC commenced on 11.09.2018. The CoC approved the Resolution Plan on 04.06.2019, and the same came to be approved by the NCLT by Order dated 24.07.2020. Therefore, the moratorium under the IBC continued upto 24.07.2020. Under the provisions of the IBC no payment could have been made during the period of moratorium. Therefore, the appellant was statutorily restrained/debarred from making any payment. There was statutory disability on the part of the appellant in making the payment during the moratorium. If the appellant had made any payment during the period of moratorium, the appellant would have committed breach of the provisions of the IBC. Therefore, it was impossible for the appellant to make any payment during the period of moratorium. Immediately on the moratorium coming to an end, the appellant – Resolution Professional / the successful Resolution applicant approached the authority requesting them to accept the settlement amount under the Scheme, 2019 as per the Form No.3. Such request has been rejected by the Commissioner on the rejection has been confirmed by the High Court.

7. Therefore, the short question which is posed for consideration before this Court is, whether, when it was impossible for the appellant to deposit the settlement amount in view of the bar and/or the restrictions under the IBC, the appellant can be punished for no fault of the appellant? In a given case can the appellant be made to suffer for no fault of its own, and be rendered remediless and

denied the benefit/relief though it was impossible for the appellant to carry out certain acts, namely to deposit the settlement amount during the moratorium.

7.1 As per the settled position of law, no party shall be left remediless and whatever the grievance the parties had raised before the court of law, has to be examined on its own merits [Sunil Vasudeva (supra) (para 31)].

7.2 As observed and held by this Court in the case of Calcutta Iron Merchants' Association (supra), no law would compel a person to do the impossible. [Calcutta Iron Merchants' Association (supra) (para 5)] 7.3 In the case of Gyanichand (supra) it was observed by this Court that it would not be fair on the part of the Court to give a direction to do something which is impossible and if a person has been directed to do something which is impossible, and if he fails to do so, he cannot be held guilty.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the appellant cannot be punished for not doing something which was impossible for it to do. There was a legal impediment in the way of the appellant to make any payment during the moratorium. Even if the appellant wanted to deposit settlement amount within the stipulated period, it could not do so in view of the bar under the IBC as, during the moratorium, no payment could have been made. In that view of the matter, the appellant cannot be rendered remediless and should not be made to suffer due to a legal impediment which was the reason for it and/or not doing the act within the prescribed time.

8.1 Now so far as the observations made by the High Court to the effect that the High Court cannot, in exercise of powers under Article 226 of the Constitution of India extend the period under the Scheme, 2019, to some extent the High Court is right. The High Court while exercising the powers under Article 226 of the Constitution of India cannot extend the Scheme. However, in the present case it is not a case of extension of the Scheme by the High Court; It is a case of taking remedial measures. It is not a case where the appellant did not make any application within the stipulated time under the Scheme. This is not a case where the Form No.3 determining the settlement amount was not issued during the validity of the Scheme. It is not a case where the appellant deliberately did not deposit the settlement amount and/or there was any negligence on the part of the appellant in not depositing the settlement amount within the stipulated time. As observed hereinabove it is a case where the appellant was unable to make the payment due to the legal impediment and the bar to make the payment during the period of moratorium in view of the provisions of the IBC. In a given case it may happen that a person who has applied under the Scheme and who was supposed to make payment on or before 30.06.2020, became seriously ill on 29.06.2020 and there was nobody to look after his affairs and therefore he could not deposit the amount; such inability was beyond his control and thereafter, immediately on getting out of sickness he tried to deposit the amount and/or approached the Court - can the Court close its eyes and say that though there may be valid reasons and/or causes for that person's inability to make the payment, still no relief can be granted to him? There may be extra ordinary cases which are required to be considered on facts of each case. The Courts are meant to do justice and cannot compel a person to do something which was impossible for him to do. 8.2 Now so far as the other ground given by the High Court, that the Designated Committees are not in existence, is concerned, it is required to be noted that the CBCE has issued a

circular that in a case where the High Court/courts have passed an order setting aside the rejection of the claim under the Scheme after 30.06.2020, the applications can be processed manually. In many cases the High Courts have remanded the matter to the Designated Committees which consist of the officers of the Department and the applications thereafter are processed manually.

9. In view of the above, and under the circumstances and for the reasons stated above, as the appellant was not in a position to deposit the settlement amount at the relevant time, more particularly on or before 30.06.2020 due to legal impediment and the bar to make the payment of settlement amount in view of the mortarium under the IBC, and as it is found that the appellant was otherwise entitled to the benefit under the Scheme as the Form No.1 submitted by the appellant has been accepted, the Form No.3 determining the settlement amount has been issued, the High Court has erred in refusing to grant any relief to the appellant as prayed.

10. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and order passed by the High Court is hereby quashed and set aside. It is directed that the payment of Rs.1,24,28,500/- already deposited by the appellant be appropriated towards settlement dues under “Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019” and the appellant be issued discharge certificate. Present appeal is allowed accordingly.

However, in the facts and circumstances of the case there shall be no order as to costs.

.....J. (M. R. SHAH) .....J. (B.V. NAGARATHNA) NEW DELHI;

JANUARY 5, 2023