



2023:KER:66864

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 26TH DAY OF OCTOBER 2023 / 4TH KARTHIKA, 1945

WP(C) NO. 7997 OF 2023

PETITIONER:

PLATINO CLASSIC MOTORS INDIA PVT. LTD.,
11/6B, NH-47, MARADU P. O., COCHIN-682304,
REPRESENTED BY ITS LIQUIDATOR, REUBEN GEORGE JOSEPH,
37/2038, 1ST FLOOR, MUTTATHIL LANE,
KADAVANTHRA, KOCHI-682 020.

BY ADVS.

SRI. ANIL D. NAIR
SMT. TELMA RAJU
SRI. P. K. BIJU
SMT. ANJANA A.

RESPONDENTS:

- 1 DEPUTY COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE,
ERNAKULAM DIVISION, 4TH FLOOR, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, KALOOR, KOCHI, PIN - 682017.
- 2 JOINT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE,
ERNAKULAM DIVISION, 4TH FLOOR, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, KALOOR, KOCHI, PIN - 682017.
- 3 SUPERINTENDENT,
CENTRAL TAX AND CENTRAL EXCISE,
ERNAKULAM DIVISION, 4TH FLOOR,
CENTRAL EXCISE BHAVAN, KATHRIKADAVU,
KALOOR, KOCHI, PIN - 682017.

BY ADV.

SRI. P. R. SREEJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No.7997 of 2023**

Dated this the 26th day of October, 2023

JUDGMENT

1. The present writ petition has been filed by the petitioner questioning Exhibits P-7, P-8, P-9 and P-10 orders. The petitioner is a dealer of BMW cars in Kerala. The Federal Bank of India filed an application under Section 7(4) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC" for short) for initiation of corporate insolvency resolution process against the petitioner before the National Company Law Tribunal, Cochin. The said application was admitted by the adjudicating authority vide Exhibit P-1 order dated 08.03.2021. Vide Exhibit P-1 order an Interim Resolution Professional (IRP) was appointed to maintain the affairs of the petitioner. The resolution plans submitted by the applicants were rejected by the Committee of Creditors. As no resolution plan was accepted, the Committee of Creditors resolved to seek a direction from the National Company Law Tribunal, Cochin for liquidation of the petitioner Company. An



order of liquidation dated 30.09.2022 in terms of Section 33 of the Insolvency and Bankruptcy Code came to be passed by the National Company Law Tribunal, Cochin appointing the Interim Resolution Professional (IRP) as the Liquidator. Once the Official Liquidator was appointed, the moratorium under Section 33 (5) of the IBC commenced. In response to the public notice, the Liquidator of the petitioner has received claim in Schedule II, Form C from the 1st respondent presenting five items of claims before the Official Liquidator.

2. The Learned Counsel for the petitioner submits that in Exhibits P-7 to P-10, orders on the basis of which five claims were submitted has been issued after the commencement of the moratorium under Section 14 of the IBC on 08.03.2021. His next submission is that the petitioner was not afforded with an opportunity by the competent authority to present the case and contesting the matter.

3. On the other hand, the Learned Counsel for the respondent submits that notice was issued to the petitioner to which the reply was filed on behalf of the petitioner and authorised representative was also heard. Therefore, the contention of the



Learned Counsel for the petitioner that the petitioner was not heard when the orders in Exhibits P-7 to P-10 came to be passed is not correct. It is further submitted that there is no bar in respect of conclusion of the ongoing assessment proceedings and adjudication under Section 14 of the IBC. The assessment were completed in accordance with law in compliance of the statutory prescription. It is therefore submitted that the assessment orders in Exhibits P-7 to P-10 cannot be set aside on the ground that the Official Liquidator was not heard while finalising the assessment.

4. I have considered the submissions. Section 14 of the IBC reads as under;

“Section 14: Moratorium

14.(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.

[*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.”

5. From perusal of Section 14 of the IBC and several Judgments of the other High Courts as well as the Supreme Court, it is well settled that Section 14 of the IBC does not create a bar for finalisation of the assessment and adjudication proceedings in respect of the taxes. On the resolution once the reference has been admitted, there is moratorium for recovery of the tax dues but,



there is no bar for finalisation of the assessment and adjudication proceedings. On perusal of the impugned orders Exhibits P-7 to P-10, it is evident that the petitioner was issued notice to which reply was filed and after hearing, these orders in Exhibits P-7 to P-10 has been finalised. Therefore, I do not find any substance in the submissions of the Learned Counsel for the petitioner that: *since the Official Liquidator was not heard, the order has become bad*. It is the petitioner who was issued notice. The representative of the petitioner remained present during the hearing. His reply was also filed in the show cause notice and thereafter the orders in Exhibits P-7 to P-10 has been passed. Thus, I find no substance in the writ petition and the same is hereby dismissed. The Official Liquidator should consider the five claims of the petitioner in accordance with the law.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

Svn

**APPENDIX OF WP(C) 7997/2023****PETITIONER'S EXHIBITS**

- EXHIBIT P1 TRUE COPY OF THE ORDER IN IBA/25/KOB/2020 DATED 08.03.2021 ISSUED BY THE ADJUDICATING AUTHORITY, NATIONAL COMPANY LAW TRIBUNAL KOCHI BENCH
- EXHIBIT P2 TRUE COPY OF THE ORDER IN IA (IBC)/100 (KOB) 2021 IN IBA/25/KOB/2020 DATED 18.11.2021 ISSUED BY THE ADJUDICATING AUTHORITY, NATIONAL COMPANY LAW TRIBUNAL KOCHI BENCH
- EXHIBIT P3 TRUE COPY OF THE MINUTES OF THE MEETING OF COMMITTEE OF CREDITORS DATED DECEMBER 22, 2021 APPOINTING THE RESOLUTION PROFESSIONAL
- EXHIBIT P4 TRUE COPY OF THE ORDER IA (IBC)/176 (KOB) 2022 IN IBA/25/KOB/2020 DATED 30.09.2022 ISSUED BY THE ADJUDICATING AUTHORITY, NATIONAL COMPANY LAW TRIBUNAL KOCHI BENCH
- EXHIBIT P5 TRUE COPY OF THE PUBLIC ANNOUNCEMENT UNDER SECTION 33 (5) OF THE CODE DATED 04-10-2022
- EXHIBIT P6 TRUE COPY OF THE CLAIM IN SCHEDULE II, FORM C SUBMITTED BY THE 1ST RESPONDENT DATED 25.11.2022
- EXHIBIT P7 TRUE COPY OF THE ORDER IN ORIGINAL NO 3/ 2022- ST (KOD) DATED 25.02.2022 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P8 TRUE COPY OF THE ORDER IN ORIGINAL NO 61 AND 62/2021/ST DATED 30.03.2021 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P9 TRUE COPY OF THE ASSESSMENT ORDER UNDER SECTION 64 OF THE CGST/SGST ACT DATED 13.07.2022 IN FORM GST ASMT-16 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P10 TRUE COPY OF THE NOTICE DATED 30.09.2022 ISSUED BY THE 3RD RESPONDENT