2024:DHC:5804-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on: 18 July 2024**
Judgment pronounced on: 07 August2024

\+ W.P.(C) 3498/2022

ASIAN COLOUR COATED ISPAT LIMITED .....Petitioner

Through: Ms. Kavita Jha & Mr. Himanshu Aggarwal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semiwal, Mr. Apoorv Agarwal, JSCs, Ms. Nupur Sharma, Mr. Manav Goyal, Mr. Gaurav Singh, Ms. Divya Verma & Mr. Bhanukaran Singh Jodha, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

1. The writ petitioner impugns the notice dated 31 March 2021 issued under Section 148 of the **Income Tax Act, 1961**[1] and relating to **Assessment Year**[2] 2014-15. A challenge is additionally laid to an order dated 17 February 2022 disposing of the objections which had been submitted by it.

[1]Act
[2]AY

2. Prior to the institution of the present writ petition, the petitioner had instituted W.P.(C) 2053/2022 assailing the Section 148 notice which came to be disposed of by this Court with a direction for the respondents to consider and dispose of the various objections which had been furnished by the writ petitioner before proceeding to commence the reassessment exercise.

3. The primary ground on which the action of reassessment is assailed is the approval of a Resolution Plan under the statutory regime constructed in terms of the **Insolvency and Bankruptcy Code, 2016**[3] and the statutory injunct which would operate in respect of any claim which may pertain to a period prior to the Resolution Plan being approved.

4. It is in the aforesaid context that Ms. Jha, learned counsel appearing for the writ petitioner, contended that the challenge is liable to be accepted bearing in mind the decisions handed down by this Court in **M Tech Developers Pvt. Ltd. v. National Faceless Assessment Centre and Anr.**[4], **Sree Metaliks Limited v. Additional Director General and Ors.**[5] and **Rishi Ganga Power Corporation Ltd. v. Assistant Commissioner of Income-tax**[6]**.**

5. According to Ms. Jha, the issue which stands raised is no longer res integra bearing in mind the judgments rendered by the Supreme Court in the context of Section 31 of the IBC and the law enunciated in **Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset**

[3]IBC
[4]2024 SCC OnLine Del 2276
[5]2023 SCC OnLine Del 941
[6]2023 SCC OnLine Del 6994

Reconstruction Company[7] and **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta &Ors.**[8]

6. For the purposes of evaluating the challenge which stands raised, it would be apposite to notice the following salient facts. The petitioner was incorporated as a limited company on 02 February 2005 under the **Companies Act, 1956**[9] and was stated to be engaged in the business of manufacturing, processing, importing and exporting steel products, tubes, pipes and other allied articles. On 04 April 2016, State Bank of India, asserting itself to be a financial creditor, filed an application under Section 7 of the IBC. That petition ultimately came to be admitted by the **National Company Law Tribunal**[10] on 20 July 2018 when an **Interim Resolution Professional**[11] came to be appointed and a moratorium enforced in terms of Section 14 of the IBC. According to the petitioners, the Additional Commissioner of Income Tax was duly apprised of the aforesaid developments in terms of a letter dated 26 July 2018.

7. On 20 August 2018, a **Committee of Creditors**[12] came to be constituted and whereafter public notice came to be issued inviting Expressions of Interest from parties. On 08 March 2019, JSW Steel Coated Products Limited submitted a Resolution Plan for the consideration of the CoC. Pursuant to deliberations which ensued before the CoC, a revised Resolution Plan came to be tendered on 06 April 2019. The aforesaid Resolution Plan was again revised and

[7](2021) 9 SCC 657
[8](2020) 8 SCC 531
[9]1956 Act
[10]NCLT
[11]IRP
[12]CoC

submitted for the consideration of the CoC on 24 April 2019 and which ultimately came to be approved on 28 June 2019. The plan was thereafter transmitted for affirmation and approval to the NCLT on 10 July 2019.

8. The NCLT, by its order of 26 October 2020, ultimately came to approve the said plan. The factum of approval of the aforenoted Resolution Plan as well as the order of the NCLT was duly communicated to the respondents by the petitioner on 04 December 2020.

9. It is only thereafter and on 31 March 2021 that the impugned notice under Section 148 came to be issued. Responding to the aforesaid, the petitioner submitted its reply on 26 May 2021. The respondent had thereafter issued notices under Section 142(1) dated 07 September 2021 and 17 December 2021 directing the petitioner to upload its Return of Income online and to furnish all the documents and the information sought in the aforementioned notices. The petitioner additionally appears to have taken various preliminary objections to the proposed reassessment as would be evident from its communications dated 13 October 2021 and 20 December 2021.

10. The writ petitioner, as stated in the preceding paragraphs, thereafter approached this Court by way of W.P.(C)2053/2022 and which came to be disposed of on terms noticed hereinabove. The various objections which were taken by the petitioners came to be negated by way of the impugned order dated 17 February 2022.

11. As would be evident from a perusal of the aforesaid order, post the disposal of the first writ petition, the respondents appear to have

sought legal opinion on the question whether reassessment action could be initiated notwithstanding the Resolution Plan having been approved by the NCLT.

12. The legal opinion which has been copiously reproduced in the impugned order firstly takes note of the provisions of the IBC and the various Regulations framed thereunder to opine that the Department is liable to be recognized as an operational creditor in terms of Section 5 of the IBC. The opinion then proceeds to take note of contingencies where an assessment order may not have been framed or passed before a moratorium comes into effect. It then took into consideration Section 446 of the 1956 Act and the various precedents rendered with reference to the aforenoted statutory provision and ultimately opined as under:-

> "**19**. Against the afore-said legal propositions, the facts of present case have been considered and the following positions emerge:
> 1.That scrutiny notice under S.143(2) of the Act dated 22.09.2019 was validly issued, as it did not offend the moratorium in vogue by means of Hon'ble NCLT's order dated 20.07.2018 under S.14 of IBC;
> 2. The said moratorium stood lifted in terms of Hon'ble NCLT's order dated 26.10.2019
> 3. The Income Tax Department had not submitted any claim before either the RP or Hon'ble NCLT in respect of the relevant period as assessment proceedings had not completed in respect thereof;
> 4. The Hon'ble NCLT's order dated 26.10.2019 does not record any finding on the issue of Income Tax Department's ability to complete the assessment for the relevant period. On the basis of prevailing law, it is submitted that such a finding will outside the scope of Adjudicating Authority, i.e. NCLT's statutory role under the IBC;"

13. It is on the aforesaid basis that the respondents take the position that since they were unable to submit any claim either before the **Resolution Professional**[13] or before the NCLT since at that time the assessment proceedings for A.Y. 2018-19 were still pending, the

[13]RP

reassessment action is not liable to be interfered with. The respondents further observe that credible information had been received with respect to A.Y. 2014-15 and which would appear to indicate that income amounting to INR 5124 crores appears to have escaped assessment.

14. Learned counsel for the writ petitioner had principally contended that the respondents stand denuded of jurisdiction or authority to commence any action for reassessment pertaining to a period prior to the approval of the Resolution Plan by virtue of Section 31 of the IBC. It was the submission of Ms. Jha that this Court has consistently taken the position that such an action would not sustain bearing in mind the legal position which has come to be conclusively settled by the Supreme Court in *Ghanashyam Mishra* and *Essar Steel*. Learned counsel in this connection drew our attention to the following observations as appearing in *M Tech Developers*:-

> "**7.** We note that while dealing with an identical issue, we had in *Ireo Fiveriver Pvt. Ltd. v. Income-tax Department* (W.P. (C) No. 12461 of 2022 dated 5-3-2024 (Delhi)) recognized the legal position to be as under:
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> > "**3.** It is in the aforesaid backdrop that we take note of the judgment rendered by the Supreme Court in *Ghanashyam Mishra and Sons (P.) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* wherein the following principles came to be laid down (page 306 of 227 Comp Cas):
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> > > "93. As discussed hereinabove, one of the principal objects of the Insolvency and Bankruptcy Code is providing for revival of the corporate debtor and to make it a going concern. The Insolvency and Bankruptcy Code is a complete code in itself. Upon admission of petition under section 7 there are various important duties and functions entrusted to resolution professional and committee of creditors. The resolution professional is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information

memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans under go deep scrutiny by resolution professional as well as committee of creditors. In the negotiations that may be held between committee of creditors and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After committee of creditors approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of section 30 of the Insolvency and Bankruptcy Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

94. We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The Legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the Insolvency and Bankruptcy Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore, hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation."

4. We also take note of the identical position which was expressed by the Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* where the following pertinent observations came to be made (page 182 of 219 Comp Cas):

"105. Section 31(1) of the Code makes it clear that once are solution plan is approved by the committee of creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this

provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In *SBI v. V. Ramakrishnan*, this court relying upon section 31 of the Code has held (page 380of 210 Comp Cas):

> "25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the committee of creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), infact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that annexure VI(e) to form 6 contained in the Rules and regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him."

106. Following this judgment in *SBI v. V. Ramakrishnan*, it is difficult to accept Shri Rohatgi's argument that that part of their solution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, the National Company Law Appellate Tribunal judgment being contrary to section31(1) of the Code and this court's judgment in *SBI v. V. Ramakrishnan* is set aside.

107. For the same reason, the impugned National Company Law Appellate Tribunal judgment in *Standard Chartered Bank v. Satish Kumar Gupta*,

> *Resolution Professional of Essar Steel Ltd.* in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/ Appellate Tribunal can now be decided by an appropriate forum in terms of section 60(6) of the Code, also militates against the rationale of section 31 of the Code. A successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would success fully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on afresh slate, as has been pointed out by us hereinabove. For these reasons, the National Company Law Appellate Tribunal judgment must also be set aside on this count."
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> **5.** In view of the aforesaid principles, the successful resolution applicant cannot be foisted with any liabilities other than those which are specified and factored in the resolution plan and which may pertain to a period prior to the resolution plan itself having been approved."

15. According to Ms. Jha, our Court in *Sree Metaliks* had come to a similar conclusion as would be apparent from the following observations rendered in that judgment:-

> "**71.**This is a case, where despite knowledge, the statutory authorities chose not to submit their proof of claim. Mr. Sharma's argument, that since it was known to SML that amounts were due, proof of claim [under the unamended Regulation i.e., Regulation 12] was not required to be filed, is difficult to accept, because if this argument were to be sustained, then whatever the assessee [in this case SML] were to state before the RP would have to be taken as the gospel truth. In a given case, the assessee could state, that nothing was due to the concerned creditor. In our view, once a Public Announcement was made, it was incumbent upon all creditors, which included the statutory creditors, to submit the proof of claim.
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> **72.** Therefore, the fact that extensions were sought to fulfil export obligations would not help the cause of the respondents. As a matter

of fact, respondent nos. 2, 3 and 7 have, in their counter-affidavit, admitted that since the amounts due had not been crystallized, they could not respond to the Public Announcement made by the IRP.

73. According to us, this argument is flawed. If this was the stand of the respondents, it could have been articulated before the RP, something which the respondents failed to do, despite knowledge of the fact that the CIRP was on.

74. Pertinently, in the reply dated 10.10.2019 submitted qua the impugned show-cause notice, this very aspect was highlighted. The respondents, throughout, have chosen not to take recourse to the provisions of the Code, to agitate their point of view.

75. Given this situation, we are of the view, that if the law, as enunciated by the Supreme Court in *Ghanashyam Mishra* is applied, then the dues, if any owed to the respondents would have to be declared as having extinguished, and if such is the position, the adjudication of the impugned show-cause notice would be an exercise in futility."

16. The petitioners also sought to draw sustenance from the following succinct observations as rendered by the Court in *Rishi Ganga Power Corporation:-*

"**25.** Thus, having regard to the fact that the Revenue had not lodged its claim, despite the publication of the public announcement by their solution professional inviting claims from creditors, including statutory/operational creditors such as the Revenue, no provision could be made (even if it may otherwise have been possible) in the approved resolution plan. The terms contained in the approved resolution plan are binding on all stakeholders, including those who could have filed claims but chose not to lodge them. The Revenue, having failed to lodge its claim, cannot enforce the impugned orders and notices, given the binding nature of the approved resolution plan.

26. Section 31 of the 2016 Code, among other things, stipulates that once the resolution plan is approved, it shall be binding on the corporate debtor and its employees, members, and creditors, which includes the Central Government, State Government, Local Authority to whom a debt in respect of payment of dues arising under any law for the time being in force and also on authorities to whom statutory dues are owed. Furthermore, the provision also stipulates that the approved plan will bind the guarantors and other stakeholders involved in forging the same. (See *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*) through the director.

> **27.** Since the Revenue failed lodge its claims, the impugned demands raised by the Revenue stand automatically extinguished. (See *Ruchi Soya Industries Ltd. v. Union of India* and *Sree Metaliks Ltd. v. Additional Director General* (at para 53))."

17. Appearing for the respondents, Mr. Maratha, learned counsel submitted that the Department was clearly constrained from submitting any claims in the course of the CIRP since at that time assessment proceedings were yet to be concluded. According to learned counsel, the claim of the respondents cannot be brushed aside or ignored merely because a Resolution Plan has come to be approved under the IBC.

18. Mr. Maratha sought to draw support for the aforenoted submissions by drawing our attention to the following passages forming part of the judgment of the Supreme Court in **State Tax Officer v. Rainbow Papers Ltd.**[14]:-

> "**41.** Section 31 IBC which provides for approval of a resolution plan by the adjudicating authority makes it clear that the adjudicating authority can approve the resolution plan only upon satisfaction that the resolution plan, as approved by the Committee of Creditors ("CoC"), meets the requirements of Section 30(2) IBC. When the resolution plan does not meet the requirements of Section 30(2), the same cannot be approved.
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> xxxx xxxx xxxx
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> **43.**The learned Solicitor General rightly argued that when a grievance was made before the adjudicating authority with regard to a resolution plan, the adjudicating authority was required to examine if the resolution plan met the requirements of Section 30(2) IBC. The word "satisfied" used in Section 31(1) contemplates a duty on the adjudicating authority to examine the resolution plan - the resolution plan cannot be approved by way of an empty formality.
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> xxxx xxxx xxxx

[14](2023) 9 SCC 545

> **45.**As rightly argued by the learned Solicitor General, there can be no question of acceptance of a resolution plan that is not in conformity with the statutory provisions of Section 31(2) IBC. Section 30(2)(b) IBC casts an obligation on the resolution professional to examine each resolution plan received by him and to confirm that such resolution plan provides for the payment of dues of operational creditors, as specified by the Board, which shall not be less than the amount to be paid to such creditors, in the event of liquidation of the corporate debtor under Section 53, or the amount that would have been paid to such operational creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (2) of Section 53, whichever was higher, and provided for the payment of debts of financial creditors, who did not vote in favour of the resolution plan, in such manner as might be specified by the Board.
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> **46.** Under Section 31 IBC, a resolution plan as approved by the Committee of Creditors under sub-section (4) of Section 30 might be approved by the adjudicating authority only if the adjudicating authority is satisfied that the resolution plan as approved by the Committee of Creditors meets the requirements as referred to in subsection (2) of Section 30 IBC. The condition precedent for approval of are solution plan is that the resolution plan should meet the requirements of sub-section (2) of Section 30 IBC.
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> xxxx xxxx xxxx
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> **52.**If the resolution plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the adjudicating authority is bound to reject the resolution plan.
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> **53.** In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 IBC."

19. Our attention was also drawn to a more recent decision handed down by the Supreme Court in **Greater Noida Industrial Development Authority**[15] and where the Court while examining the

[15] 2024 SCC OnLine SC 122

scope of Sections 30 and 31 of the IBC had framed the following issues for consideration:-

> "**39.** Upon consideration of the rival submissions, following issues arise for our consideration in this appeal:
> (i) Whether in exercise of powers under sub-section (5) of section60, the Adjudicating Authority (i.e., National Company Law Tribunal) can recall an order of approval passed under sub-section(1) of section 31 of the Insolvency and Bankruptcy Code ?
> (ii) Whether the application for recall of the order was barred by time?
> (iii) Whether the resolution plan put forth by the resolution applicant did not meet the requirements of sub-section (2) of section 30 of the Insolvency and Bankruptcy Code read with regulations 37 and38 of the CIRP Regulations, 2016?
> (iv) As to what relief, if any, the appellant is entitled to?"

20. We do not propose to dwell upon the decision in *Greater Noida Industrial Development Authority* since the same was concerned principally with the question of whether an application for recall of an order approving a Resolution Plan could be maintained where it was established that the Resolution Plan fails to meet the requirements of Section 30(2) and bearing in mind the precept of a procedural review. The Supreme Court in *Greater Noida Industrial Development Authority* on facts found that the resolution plan was not in accord with Section 30(2). It was in the said backdrop, that it held that in such a situation an application for recall would be maintainable.

21. Suffice it to observe that it is not the case of the respondents that the NCLT has been moved for the purposes of recall of its order according approval to the Resolution Plan. It is also not their case that the Resolution Plan insofar as it rings in a closure in respect of any claim or demand that may be said to exist in respect of the corporate debtor is liable to be set aside. In fact, the respondents do not appear to have questioned the validity of the Resolution Plan at any stage. We

thus find ourselves unable to appreciate how the decision in *Rainbow Papers* could come to their aid.

22. Viewed in the aforesaid light, it is manifest that it is the view taken by this Court in *M Tech Developers*, *Sree Metaliks* and *Rishi Ganga Power Corporation* which would prevail and lead us to the inevitable conclusion that the reassessment action would not sustain.

23. We, accordingly, allow the instant writ petition and quash the impugned notice under Section 148 for A.Y. 2014-15 dated 31 March 2021.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 07, 2024/RW