IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

* * * *

W.P.No.25827 of 2019

Between:

The Sirpur Paper Mills Limited & Another

Petitioners

VERSUS

Union of India & Two Others

Respondents

JUDGMENT PRONOUNCED ON: 18.01.2022

HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
HON'BLE DR.JUSTICE CHILLAKUR SUMALATHA

1.	**Whether Reporters of Local newspapers may be allowed to see the Judgments?**	**:**	**Yes**
2.	**Whether the copies of judgment may be Marked to Law Reporters/Journals?**	**:**	**Yes**
3.	**Whether His Lordship wishes to see the fair copy of the Judgment?**	**:**	Yes

UJJAL BHUYAN, J

* HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
HON'BLE DR.JUSTICE CHILLAKUR SUMALATHA

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! Counsel for Petitioner : Sri S.Niranjan Reddy

^ Counsel for the respondents : Ms.Mamatha Chowdary

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> HEAD NOTE:

? Cases referred

[1] 2018 SCC OnLine SC 984
[2] W.P.No.8560 of 2018 decided by this Court on 26.07.2018
[3] (2020) 8 SCC 531
[4] W.P.No.14798 of 2021 decided by this Court on 03.09.2021
[5] (2021) 9 SCC 657
[6] (2017) SCC OnLine Delhi 12759
[7] (2000) 5 SCC 694

THE HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

W.P.No.25827 OF 2019

JUDGMENT AND ORDER:
(*Per* Hon'ble Sri Justice Ujjal Bhuyan)

Heard Mr. S.Niranjan Reddy, learned senior counsel for the petitioners and Ms.Mamatha Chowdary, learned counsel for the respondents.

2 By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of notices dated 22.09.2019, 21.10.2019 and 30.10.2019 issued by respondent Nos.2 and 3 for the assessment year 2017-18 as being illegal and *non-est* and further seek a direction to the said respondents not to reopen their claims which were settled in insolvency proceedings.

3 Petitioner No.1 is a company incorporated under the Companies Act, 1956 and is engaged in the business of paper manufacturing. Similar is the status of petitioner No.2.

4 M/s. Rama Road Lines and others had filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) as operational creditor for initiating corporate insolvency resolution process of petitioner No.1. The said application was admitted on 18.09.2017 by the National Company Law Tribunal (briefly, 'the Tribunal' hereinafter). By virtue of order of the Tribunal, Section 13 of IBC came into play

and moratorium was ordered. As per Section 21 of the IBC, a committee of creditors was constituted from amongst the financial creditors of the corporate debtor i.e. petitioner No.1.

5 Thereafter, the resolution professional made a public announcement on 25.09.2017 inviting claims from all the creditors. It is stated that respondents did not submit claims before the resolution professional. As part of the resolution process, prospective resolution applicants were invited to present their resolution plans for the corporate debtor i.e. petitioner No.1. Petitioner No.2 as the resolution applicant submitted its resolution plan on 12.02.2018, which was thereafter revised pursuant to discussions held with the committee of creditors. The said resolution plan was revised from time to time as sought for by the creditors. The final resolution plan was submitted by petitioner No.2 on 30.04.2018. The same was approved by the committee of creditors and it was approved by the Tribunal, vide its order dated 19.07.2018.

6 According to the petitioners, respondent No.2 had ample opportunity to submit claims before the resolution professional. But it failed to do so. Be that as it may, the resolution plan as approved by the Tribunal vide order dated 19.07.2018, dealt with the various claims made against the corporate debtor i.e. petitioner No.1. As per the approved resolution plan, the total claim of the operational creditors of the corporate debtor was

quantified at Rs.95.71 crores and the payment as per the resolution plan was fixed at Rs.9.50 crores.

7 Petitioner No.1 had filed return for the assessment year 2017-18 on 17.10.2018. Thereafter respondent No.2 issued notice dated 22.09.2019 under Section 143(2) of the Income Tax Act, 1961 (briefly, 'the Act' hereinafter) read with Rule 12E of the Income Tax Rules, 1962 (briefly, 'the Rules' hereinafter). Responding to the said notice, petitioner No.1 stated in the letter dated 14.10.2019 that as the resolution plan has been approved by the Tribunal, all proceedings and claims arising from dues prior to approval of resolution plan stood discharged by virtue of Section 31(1) of the IBC. In addition, petitioner No.1 also informed respondent No.2 that the factory remained closed from September 2014 onwards due to severe financial crisis; it was also stated that there were no sales and purchase transactions recorded during the assessment year 2017-18.

8 Without considering the reply of petitioner No.1, respondent No.3 again sent notice under Section 142(1) of the Act on 22.10.2019 calling upon petitioner No.1 to furnish the accounts for the assessment year 2017-18 as well as details regarding its immovable assets. This was followed by another notice issued by respondent No.3 on 30.10.2019.

9 Aggrieved thereby, the present writ petition has been filed seeking the reliefs as indicated above.

10 It is contended that Income Tax Department i.e. respondent No.2 is an operational creditor of the corporate debtor i.e. petitioner No.1. As a consequence of approval of the resolution plan under Section 31(1) IBC, the resolution plan is binding on the corporate debtor as well as on the creditors and other stakeholders involved in the resolution plan. The rights/claims of respondent No.2 are well protected under IBC. Therefore, respondent No.2 cannot exercise an independent right after an order is passed by the Tribunal approving the resolution plan.

11 Reference has also been made to a Government of Telangana order dated 21.03.2018 whereby and whereudner benefits were extended to petitioner No.2 for revival of petitioner No.1. It was stated therein that Government dues are to be settled proportionately with the dues of other operational creditors. Reliance has also been placed upon Clause 7.5 (c) of the resolution plan which states that upon approval of the resolution plan by the Tribunal all dues under the Act in relation to any period prior to the completion date shall stand extinguished and the corporate debtor shall not be liable to pay any such amount. All notices proposing to initiate any proceedings against the corporate debtor in relation to the period prior to the date of the order of the Tribunal and pending on that day shall stand abated and shall not be proceeded against. Post the order of the Tribunal, no reassessment /

refund or any other proceedings under the Act shall be initiated on the corporate debtor in relation to the period prior to acquisition of control by the resolution applicant.

12 Petitioners have asserted that the impugned notices dated 22.09.2019, 21.10.2019 and 30.10.2019 for the assessment year 2017-18 in relation to period prior to the date of approval of the resolution plan, would no longer be maintainable in view of the resolution plan.

13 Petitioners have further referred to and relied upon the provisions of Section 238 of the IBC which says that provisions of IBC shall have an overriding effect over all other laws.

14 This Court by order dated 20.12.2019 stayed the operation of the notices dated 22.09.2019, 21.10.2019 and 30.10.2019 till the next date of hearing, which order has been continued from time to time.

15 Petitioners have filed an additional affidavit. It is stated that return of income for the assessment year 2017-18 was filed on 07.11.2017 by the resolution professional on behalf of petitioner No.1. In the said return loss of Rs.15,49,43,866-00 was shown and refund of Rs.11,47,698-00 on account of tax deduction at source (TDS) was claimed.

16 Resolution plan of petitioner No.2 in relation to petitioner No.1 was approved by the Tribunal on 19.07.2018. Referring to Clause 7.5 of the resolution plan, it is stated that the said

clause specifically provides that there would be no further claims binding on the petitioners subsequent to the completion date, particularly, in the context of the Act.

17 Even so, vide notice dated 02.10.2018 issued by the Deputy Commissioner of Income Tax, Centralized Processing Centre (CPC), Bangalore, it was informed that there was some arithmetical error in the original return filed by petitioner No.1 for which petitioner No.1 was required to file revised return. On verification it was found that while computing the income under the head 'business or profession', interest income of Rs.97,28,737-00 was reduced to be reflected under the head 'income from other sources'. However, the same was not shown under the head 'income from other sources'

18 Since this was purely an arithmetical error and as petitioner No.1 agreed to the stand of the Deputy Commissioner of Income Tax, CPC, the same was corrected by filing revised return on 17.10.2018. In the revised return, petitioner No.1 reduced the loss figure by Rs.97,28,737-00 and claimed loss of Rs.14,52,15,129-00 (Rs.15,49,43,866-00 less Rs.97,28,737-00). Besides the above, there were no other changes in the revised return.

19 Petitioner No.1 informed the Deputy Commissioner of Income Tax, CPC on 01.11.2018 that the mistake in the original return was rectified in the revised return. However, respondent

No.3 issued the first impugned notice under Section 143 (2) of the Act.

20 Fundamental grievance of the petitioners is that by way of the impugned notices, several issues are being reopened. Reiterating that rights / claims of respondent No.2 are to be seen in the context of the IBC and that respondent No.2 cannot exercise an independent right after resolution plan is approved by the Tribunal, petitioners seek quashing of the impugned notices.

21 Respondent No.3 has filed counter affidavit. At the outset, respondent No.3 has questioned maintainability of the writ petition since the impugned notices were issued in exercise of the statutory jurisdiction vested with respondent No.3. The resolution plan sought to be relied upon by the petitioners is neither applicable nor binding upon the respondents. Respondent Nos.2 and 3 are neither operational creditors nor involved in the making of the resolution plan.

22 Since petitioners are seeking to establish that by way of carry forward of accumulated losses and unabsorbed depreciation of approximately Rs.377.00 crores for the assessment year 2017-18 to be set up against future profits and the refund of approximately Rs.11,47,608-00 for the assessment year 2017-18, answering respondent is entitled to undertake proceedings which would establish the veracity and correctness of such claims.

23 Impugned notice dated 22.09.2018 was issued electronically pursuant to an automated Computer Aided Scrutiny Selection (CASS) for limited scrutiny of the return filed by the petitioner on 17.10.2018 with respect to investment, business loss etc. The subsequent notices dated 21.10.2019 and 30.10.2019 were issued by the third respondent under Section 142 of the Act. Thus the impugned notices are in accordance with the Act, within jurisdiction and maintainable.

24 As petitioner No.1 was a loss-making entity no tax was payable and consequently no monies remain recoverable so as to require any claim to be made by respondent No.3 *vis-à-vis* petitioner No.1. Therefore, there was no requirement for the respondents to submit any claim before the resolution professional. As respondent Nos.2 and 3 have no claim against petitioner No.1 and are not operational creditors, contentions advanced by the petitioners on the presumption that Income Tax Department i.e. respondent No.2 is an operational creditor are totally misplaced. There is no debt or dues payable by the petitioners to the respondents and therefore respondent Nos.2 and 3 are not operational creditors. Further, respondents did not receive any notice of the resolution plan and were not granted an opportunity to participate in the formulation of the resolution plan. Hence the resolution plan cannot be said to be binding on respondent Nos.2 and 3.

25 The proceedings, in connection with which the impugned notices were issued, are to assess the claims of the petitioners against the Revenue by way of carry forward of accumulated losses and unabsorbed depreciation amounting to Rs.377-00 crores which are sought to be set off against future profits of petitioner No.1. Hence the same is not covered by the resolution plan.

26 Without prejudice to the above, it is contended that since the assessment pertains to benefits sought to be claimed the present income tax proceedings would not be barred as they relate to future profits and not to dues prior to approval of the resolution plan. Clause 7.5 of the resolution plan is with respect to claims and liabilities against petitioner No.1/ corporate debtor and hence not applicable. Impugned notices pertain to scrutiny of the return of income filed on 17.10.2018 subsequent to the date of approval of the resolution plan i.e. 19.07.2018.

27 It is contended that the resolution plan cannot override or supersede statutory requirements. Any provision in the resolution plan contrary to or inconsistent with the statute would need to yield to such statutory prescriptions. Finally it is contended that respondent No.3 is not an operational creditor. The resolution plan was not put to the notice of respondent No.3 who never participated nor was involved in the making of such plan. However, without prejudice to such stand taken, it

is contended that the resolution plan only seeks to restrict the proceedings where claims are made against the corporate debtor. No such claims have been made by respondent No.3 against petitioner No.1.

28 In the circumstances respondent No.3 seeks dismissal of the writ petition.

29 In the rejoinder affidavit petitioners have reiterated their contentions made in the writ petition as well as in the additional affidavit.

30 It is stated that on a conjoint reading of Section 5 (20) and Section 5 (21) of the IBC it is evident that respondent No.2 is an operational creditor of petitioner No.1. It is a settled legal position that once a resolution plan is approved by the Tribunal and the corporate debtor has complied with the obligations under the resolution plan, all the prior dues and proceedings would stand extinguished. Thus any claim on the petitioners for the past period prior to approval of resolution plan stood discharged by virtue of Section 31 of IBC. However, this would not take away the right of the petitioner to make claims against the respondents by way of set off of carry forward of accumulated losses and unabsorbed depreciation for the past period against profits of future years. Thus petitioner is entitled and eligible to claim set off of brought forward losses including unabsorbed depreciation against future profits and

consequently eligible to refund for the assessment year 2017-18.

31 Putting the matter in perspective it is stated that the original return of income for the assessment year 2017-18 was filed on 07.11.2017. For the reasons indicated this was revised by petitioner No.1 on 17.10.2018. Therefore, the contention of the answering respondent that the return of income was filed by petitioner No.1 on 17.10.2018 after the date of order of the Tribunal is incorrect. The revised return of income was in relation to the past period which the answering respondent has no legal mandate to reopen by virtue of the resolution plan.

32 In the circumstances it is reiterated that impugned notices dated 22.09.2019, 21.10.2019 and 30.10.2019 are beyond jurisdiction, in contravention of the resolution plan and therefore are liable to be set aside and quashed.

33 Learned counsel for the petitioners has submitted a brief synopsis and list of dates mentioning therein the chronology of events. He submits therefrom that M/s. Rama Road Lines and other operational creditors had filed an application under Section 9 of the IBC for insolvency resolution of Petitioner No.1, which was admitted by the Tribunal on 18.09.2017. Moratorium was ordered and committee of creditors of the corporate debtor was constituted. When resolution professional made public announcement on 25.09.2017 inviting claims from all the creditors of the corporate debtor i.e. petitioner No.1,

respondent i.e. Income Tax Department did not submit its claim. On 07.11.2017 the resolution professional filed income tax return on behalf of the corporate debtor for the assessment year 2017-18. Petitioner No.2 submitted resolution plan in respect of the corporate debtor on 12.02.2018. However, following discussions with the committee of creditors, revised / final resolution plan was submitted by petitioner No.2 on 30.04.2018. Resolution plan submitted by petitioner No.2, as revised, was approved by the committee of creditors and thereafter by the Tribunal on 19.07.2018. When respondent No.3 pointed out arithmetical error in the return filed on 07.11.2017 by issuing notice under Section 143 (1) (a) (ii) of the Act on 02.10.2018, petitioner No.1 filed revised return on 17.10.2018 accepting the error. This was followed by the impugned notices dated 22.09.2019, 14.10.2019 and 21.10.2019 under Sections 143(2) and 142 (1) of the Act.

34 Learned counsel for the petitioners has referred to Sections 5 (20) and 5 (21) of IBC to contend that Income Tax Department would be construed to be an operational creditor and the tax dues would be construed to be an operational debt. Referring to the provisions of sub-Section (1) of Section 31 IBC, he submits that once a resolution plan as approved by the committee of creditors is approved by the adjudicating authority, all concerned including the Income Tax Department would be bound by the resolution plan. Learned counsel for

the petitioners has referred to the resolution plan, more particularly, to Clause 7.5 (c) thereof to contend that all existing income tax dues would stand extinguished and all notices proposing to initiate any proceeding against the corporate debtor in relation to the period prior to the date of the Tribunal's order would stand abated. Income Tax Department cannot proceed on the basis of the impugned notices. If there is any doubt on this count, Section 238 IBC makes it abundantly clear that provisions of the IBC would prevail over the Act.

35 However, learned counsel for the petitioners referring to Clause 17.7(c) of the resolution plan submits that notwithstanding the binding nature of the resolution plan as approved by the Tribunal, it would not come in the way of the petitioners to raise claims against the respondents by way of set off of carry forward of accumulated losses and unabsorbed depreciation for the past period against profits of future years including entitlement to refund.

36 In support of his submissions, learned counsel for the petitioners has placed reliance on the following decisions:

i) **Principal Commissioner of Income Tax Vs. Monnet Ispat & Energy Limited**[1],

ii) **Leo Edibles & Fats Limited Vs. Tax Recovery Officer**[2],

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[1] **2018 SCC OnLine SC 984**

iii) **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta**[3] ,

iv) **Shree Raghav Ispat (India) Private Limited vs. State of Telangana**[4],

v) **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited**[5]**,**

vi) **Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Limited**[6].

37 In response, Ms. Mamatha Chowdary, learned standing counsel for the Income Tax Department submits that there is no substance in the contentions advanced on behalf of the petitioners. The impugned notices have been issued under Sections 143 (2) and 142 (1) of the Act. As per those notices, petitioner No.1 has only been called upon to produce documents or furnish information in relation to its claim of carry forward of losses. There is nothing in the impugned notices which can be said to be in conflict with or in contravention of the resolution plan as approved. Therefore, the writ petition challenging the said notices is liable to be dismissed.

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[2] W.P.No.8560 of 2018 decided by this Court on 26.07.2018
[3] (2020) 8 SCC 531
[4] W.P.No.14798 of 2021 decided by this Court on 03.09.2021
[5] (2021) 9 SCC 657
[6] (2017) SCC OnLine Delhi 12759

38 Without prejudice to the above contention, learned counsel for the respondents submits that there is no 'operational debt' of petitioner No.1 towards the respondents. Therefore, respondents cannot be construed to be operational creditor within the meaning of Section 5 (20) IBC. Since there are no dues to be paid by the petitioner to the Income Tax Department, Clause 7.5 of the resolution plan would not be applicable and cannot be construed to be binding on the respondents. In any view of the matter, Clause 7.5 (c) only states that assessments and notices issued prior to approval of the resolution plan would stand abated and prohibits reassessment or revision. It does not bar or prohibit initiation of any proceeding post the approval date of the Tribunal.

39 Insofar the present case is concerned, petitioner No.1 filed revised return on 17.10.2018 and it was only in connection with the revised return that the impugned notices were issued for furnishing evidence / information for a limited scrutiny of the revised return. She points out that the revised return was filed on 17.10.2018 after approval of the resolution plan on 19.07.2018.

40 Learned counsel for the respondents submits that contrary to the contention of the petitioners, what the petitioners are seeking by way of the revised return is carry forward of accumulated losses and unabsorbed depreciation to be set off against future profits. This has to be verified and an

assessment has to be made without which the benefit of carry forward may not be available to the petitioner. Therefore, learned counsel for the respondents would contend that there is no inconsistency between the resolution plan and by extension IBC with the impugned notices and the Act. Therefore, question of Section 238 IBC having overriding effect is redundant. She has also referred to the provisions of Section 79 of the Act prior to its substitution with effect from 01.04.2020. Referring to the said provision, more particularly, to the third proviso thereof, she submits that the provision contained in Section 79 providing for carry forward and set off of losses subject to the conditions stipulated therein would be applicable to petitioner No.1.

41 She further submits that the impugned notices have been issued by the respondents in exercise of their statutory powers and well within their jurisdiction. Filing of the writ petition is nothing but an attempt to prevent the respondents from discharging their statutory duty. Therefore, the writ petition is liable to be dismissed.

42 Submissions made by learned counsel for the parties have received the due consideration of the Court.

43 Before adverting to the facts of the present case, it would be apposite to deal with those provisions of the IBC, which are relevant to the present case.

44 The Insolvency and Bankruptcy Code, 2016 (already referred to as 'the IBC') is an act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India and for matters connected therewith and incidental thereto.

45 To understand the essence of the IBC it is important to examine the statement of objects and reasons of IBC which reads as under:

> **Statement of Objects and Reasons:-** There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debts Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the Courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delay in resolution, therefore, the proposed legislation.
>
> 2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters concerned therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

3. The Code seeks to provide for designating the NCLT and DRT as the Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

4. The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, Income Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Enforcement Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

5. The Code seeks to achieve the above objectives.

45.1 Thus, the core objective for introduction of IBC appears to be to provide an effective legal framework for timely resolution of insolvency and bankruptcy proceedings which would support development of credit markets while encouraging entrepreneurship. At the same time, IBC seeks to balance the interest of all the stakeholders in the payment of dues. It thus seek to improve the ease of doing business, facilitating more investments, in the process leading to higher economic growth and development.

46 'Board' has been defined under Section 3 (1) to mean the Insolvency and Bankruptcy Board of India established under sub-Section (1) of Section 188. Part II comprises of Section 4 to Section 77 spanning over 7 chapters. As per Section 4, Part II shall apply to matters relating to insolvency and liquidation of

corporate debtors where the minimum amount of default is one lakh rupees.

47 Certain expressions relevant for Part II are defined in Section 5. As per Section 5 (1), 'Adjudicating Authority' for the purposes of Part II shall mean National Company Law Tribunal (Tribunal) constituted under Section 408 of the Companies Act, 2013. "Liquidation Commencement Date" has been defined under sub-Section (17) of Section 5 to mean the date on which proceedings for liquidation commences. Section 5 (20) defines 'Operational Creditor' to mean a person to whom such debt is owed and includes any person to whom such debt has been legally assigned or transferred. On the other hand, 'Operational Debt' has been defined under sub-Section (21) of Section 5 to mean or claim in respect of the provisions of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. As per Section 5 (26), "resolution plan" means a plan proposed by a resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II. Explanation below sub-Section (26) clarifies that a resolution plan may include provisions for restructuring of the corporate debtor including by way of merger, amalgamation and demerger. Section 5 (27) defines a 'resolution professional' to mean an insolvency professional

appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.

48 As per Section 6, where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor, by filing necessary application before the adjudicating authority.

49 Section 30 provides for submission of resolution plan by a resolution applicant to the resolution professional which has to confirm to the requirements as provided in sub-Section (2). Under sub-Section (3), the resolution professional shall present such resolution plan to the committee of creditors for its approval. Be it stated that the committee of creditors is constituted under Section 21 of IBC comprising of financial creditors of the corporate debtor. As per sub-Section (4), the committee of creditors may approve the resolution plan by a voting of not less than 66% of the voting share of financial creditors after duly considering its feasibility and viability. Once the resolution plan is approved by the committee of creditors, the resolution professional shall submit the same to the adjudicating authority under sub-Section (6).

50 Section 31 deals with approval of resolution plan. As per sub-Section (1), if the adjudicating authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements of sub-Section (2) of Section 30, it shall

by order approve the resolution plan. Once the resolution plan is so approved by the adjudicating authority, it shall be binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

51 Distribution of assets and the order of priority are dealt with in Section 53. Sub-Section (1) of Section 53 starts with a non-obstante clause. It says that notwithstanding anything to the contrary contained in any law enacted by the Parliament or by any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the order of priority and within such period and in such manner as prescribed thereunder. Section 53 is extracted hereunder:

> **53. Distribution of assets:-** (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely-
>
> a) the insolvency resolution process costs and the liquidation costs paid in full;
>
> b) the following debts which shall rank equally between and among the following-
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> (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
>
> (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52;
>
> c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

d) financial debts owed to unsecured creditors;

e) the following dues shall rank equally between and among the following:-

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interests;

f) any remaining debts and dues;

g) preference shareholders, if any; and

h) equity shareholders or partners, as the case may be.

52 Thus from the above, we find that any amount due to the Central Government and to the State Government in respect of the whole or any part of the period of two years preceding the liquidation commencement date is placed at Sl.No.5 in order of priority.

53 Finally, Section 238 IBC says that provisions of 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. Thus, provisions of IBC will override other laws.

54 While on the IBC, we may refer to some of the judgments which may have a bearing on the present dispute.

55 In **Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co**[7], Supreme Court has held that income tax dues being in the nature of crown debts do not take precedence over secured

[7] **(2000) 5 SCC 694**

creditors who are private persons. It has been explained that the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. Thus, the common law doctrine of priority of Crown debts would not extend to providing preference to Crown debts over secured private debts.

56 Following the above, Delhi High Court in **Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Limited,** (2017) SCC OnLine Delhi 12759, disposed of the Income Tax Appeals filed by the Revenue in view of admission of insolvency resolution application by the Tribunal against the assessee which prohibited institution of suits or continuation of pending suits or proceedings against the assessee. It was held that the above prohibition would cover the appeals filed by the Revenue against orders of the Income Tax Appellate Tribunal in respect of the tax liability of the assessee. While disposing of the appeals as such, liberty was granted to the Revenue to revive the appeals subject to further orders of the Tribunal. This order of the Delhi High Court has been affirmed by the Supreme Court in **Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Limited** (1 supra). Supreme Court has held that in view of Section 238 of IBC, it is obvious that it

will override anything inconsistent contained in any other enactment including the Income Tax Act. Reference was made to its earlier decision in **Dena Bank** case (4 supra).

57 Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta** (3 supra) was examining various questions as to the role of resolution applicants, resolution professionals, committee of creditors and jurisdiction of the adjudicating authority. Adverting to Section 31 (1) of the IBC, it has been held that once a resolution plan is approved by the committee of creditors, it shall be binding on all the stakeholders including guarantors. Explaining the rationale behind this, it is stated that this is to ensure that the successful resolution applicant starts running the business of corporate debtor on a fresh slate as it were. Elaborating further, it has been held that 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 throwing into uncertainty amounts payable by a prospective resolution applicant. It has been explained as under:

> For the same reason, the impugned NCLAT judgment 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 successfully takes 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 a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.

58 Finally in **Ghanashyam Mishra** case (5 supra) the question before the Supreme Court was as to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by the adjudicating authority under Sub-Section (1) of Section 31 of IBC? The further question before the Supreme Court was as to whether after approval of the resolution plan by the adjudicating authority, a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceeding for recovery of dues from the corporate debtor which are not part of the resolution plan approved by the adjudicating authority?

59 After elaborate discussion, Supreme Court held that any debt in respect of payment of dues arising under any law for the time being in force including the ones owed to the Central Government or any State Government, or any local authority which does not form a part of the approved resolution plan shall stand extinguished. Clarifying further it has been held that once a resolution plan is approved by the adjudicating authority, all such claims /dues owed to the State / Central Government or any local authority including the tax authorities who were not part of the resolution plan shall stand extinguished. It has been held as follows:

95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) x x x x

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval Under Section 31 could be continued.

60 Having discussed the relevant provisions of IBC and some of the leading judgments, we may now advert to the resolution plan.

61 As already discussed above, the resolution plan for petitioner No.1 as submitted by petitioner No.2, after due discussions with the committee of creditors and after being revised came to be approved by the Tribunal, vide order dated 19.07.2018. By the said order, Tribunal noted that the resolution plan as approved by the committee of creditors had taken into account the concessions given by the Government of Telangana, further observing that revival of the corporate debtor would enhance the interest of all the stakeholders and the economic condition of the area. Thus taking into account the finding that the resolution plan is in accordance with sub-Section (2) of Section 30 IBC, Tribunal being the adjudicating

authority approved the same declaring that the resolution plan would be binding on all stakeholders.

62 While at the resolution plan, what is of relevance is the portion dealing with the amount due to the Government or governmental authorities. This is dealt with in Clause 7.5. Sub-Clause (c) deals specifically with regard to the dues under the Act. Clause 7.5 (c) of the resolution plan being relevant is extracted hereunder:

> Upon approval of this Resolution Plan by the NCLT, all dues under the provisions of Income Tax Act, 1961, including taxes, duty, penalties, interest, fines, cesses, unpaid tax deducted at source / tax collected at source, whether admitted or not, due or contingent, whether part of above claim of income tax authorities or not, asserted or unasserted, ctystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Completion Date, shall sand extinguished and the Corporate Debtor shall not be liable to pay any amount against such demand. All assessments / appellate or other proceedings pending in case of the Corporate Debtor, on the date of the order of NCLT relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered to be not payable by the Corporate Debtor in relation to the period prior to the date of NCLT order and pending on that date shall stand abated and should not be proceeded against. Post the order of the NCLT, no re-assessment / revision or any other proceedings under the provisions of the Income Tax Act shall be initiated on the Corporate Debtor in relation to period prior to acquisition of control by the Resolution Applicant and any consequential demand should be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the order of NCLT.
>
> The Corporate Debtor shall be entitled to carry forward the unabsorbed depreciation and accumulated losses and to utilize such amounts to set off future tax obligations.

63 From a perusal of the above, what the above Clause provides for is that all dues under the Act whether asserted or unasserted, crystallized or uncrystallized, present or future in relation to any period prior to the completion date shall stand extinguished and the corporate debtor shall not be liable to pay any amount against such demand. All assessments or other proceedings relating to the period prior to the completion date

shall stand terminated and all consequential liabilities would stand abated. It further clarifies that all notices proposing to initiate any proceeding against the corporate debtor in relation to the period prior to the date of the Tribunal's order and pending on that date shall stand abated and should not be proceeded against. Post the order of the Tribunal, no re-assessment or revision or any other proceeding under the Act shall be initiated on the corporate debtor.

64 We may also refer to Clause 17.7 of the resolution plan which provides for tax and stamp duty exemptions. Sub-Clause (c) says that the corporate debtor shall be entitled to carry forward the unabsorbed depreciation and accumulated losses and to utilize such amounts to set off future tax obligations. Sub-Clause (c) of Clause 17.7 reads as under:

> "The Corporate Debtor shall be entitled to carry forward the unabsorbed depreciation and accumulated losses and to utilize such amounts to set off future tax obligations."

65 Adverting to the facts of the present case, it is seen that the date of approval of the resolution plan by the Tribunal is 19.07.2018. For the assessment year 2017-18, the resolution professional on behalf of the corporate debtor had filed the return of income on 07.11.2017. In that return of income, the corporate debtor disclosed loss of Rs.15,49,43,866-00 and claimed refund of Rs.11,47,698-00 on account of TDS. Thus the return was filed prior to approval of the resolution plan. After approval of the resolution plan by the Tribunal on

19.07.2018, Deputy Commissioner of Income Tax, CPC, Bangalore, issued notice dated 02.10.2018 to the corporate debtor stating that there was some arithmetical error in the return of income which needed to be corrected. Corporate debtor i.e. petitioner No.1 found on verification that interest income of Rs.97,28,737-00 was not disclosed under the head "income from other sources" though it has reduced while computing the income under the head 'business or profession'. Therefore, petitioner No.1 filed a revised return on 17.10.2018 whereby the loss figure was reduced by the quantum of interest income. Accordingly the loss figure was revised at Rs.14,52,15,129-00 {Rs.15,49,43,866-00 (-) Rs.97,28,737-00}. Subsequently by letter dated 01.11.2018 petitioner No.1 informed the Deputy Commissioner of Income Tax, CPC, Bangalore, that the arithmetical mistake in the return was rectified in the revised return.

66 It was thereafter that the impugned notices came to be issued. Let us now examine the contents of the impugned notices.

67 As per the first notice dated 22.09.2019 issued under Section 143 (2) of the Act, petitioner No.1 was informed that there are certain issues which need further clarification for which the return of income has been selected for limited scrutiny under CASS. The issues were mentioned as under:

i. Investments / Advances / Loans
ii. Business loss.

68 Petitioner No.1 responded by letter dated 14.10.2019 stating that in view of the resolution plan, the said notice dated 22.09.2019 would no longer be maintainable. Notwithstanding the same, the subsequent notices were issued on 21.10.2019 and 30.10.2019 under Section 142 (1) of the Act. Petitioner No.1 was called upon to furnish amongst others the following information:

i. Brief note on nature of business activities carried on during the previous year 2016-17,

ii. Certified statement of computation of total income, audited financial statements etc.,

iii. Details of Directors,

iv. Reconciliation statement for difference in gross receipts shown in the books of account with that in the TDS certificates,

v. Details of bank accounts,

vi. Complete details of debtors,

vii. Complete details of immovable assets,

viii. Explanation as to why total income including exempted income shown in the return is significantly low compared to the assessee's disclosure of substantial amount of losses, advances, investment in shares.

69 From the above, it is evident that Income Tax authorities are seeking information for the purpose of making assessment for the assessment year 2017-18 as the return of the corporate debtor (petitioner No.1) has been taken up for scrutiny under CASS. The assessment year 2017-18 (previous year 2016-17) covers the period prior to approval of the resolution plan by the Tribunal on 19.07.2018. Clause 7.5 (c) as extracted and discussed above, bars all notices to initiate any proceeding

against the corporate debtor in relation to the period prior to the date of the Tribunal's order, clarifying that such notices would stand abated. All assessment proceedings relating to the period prior to the completion date would stand terminated with all consequential liabilities being abated. That apart, as per paragraph No.17.7 (c) of the resolution plan, the corporate debtor is entitled to carry forward the unabsorbed and accumulated losses and to utilize such amounts to set off future tax obligations.

70 From the tone and tenor of the impugned notices what is evident is that respondents are seeking to pass assessment order under Section 143 (3) of the Act since the case of petitioner No.1 was selected for limited scrutiny under CASS. However, the period of the assessment order would be a period covered by the resolution plan. We have already noticed that petitioner No.1 through the resolution professional had filed return of income prior to order of the Tribunal approving the resolution plan. When arithmetical mistake was pointed out by the Income Tax Department, post such approval, petitioner No.1 carried out the correction and submitted revised return lowering the figure of loss sustained by petitioner No.1. Such a revised return cannot be construed as a fresh return filed by the petitioner No.1 since it is a continuation of the return of income filed earlier. In view of Clause 7.5 (c) of the resolution plan, as approved by the Tribunal and in view of the decisions

of the Supreme Court in **Committee of Creditors of Essar Steel India Limited** (3 supra) and **Ghanashyam Mishra** (5 supra), the claim of the Income Tax Department which is outside the resolution plan would stand extinguished.

71 Insofar carry forward of losses and adjustments against future profits are concerned, the same is provided by Clause 17.7 (c) of the resolution plan. However, as and when such carry forward and set off is claimed by the petitioner in future, i.e. beyond the period covered by the resolution plan, the Income Tax Department would be entitled to verify such claim and pass appropriate order. But for the period covered by the resolution plan, it cannot carry out any scrutiny or carry out assessment in respect of the corporate debtor. To that extent, the impugned notices cannot be justified.

72 Regarding reliance placed by learned standing counsel on Section 79 of the Act, in our view the same is misplaced. The said provision as it stood prior to its substitution with effect from 01.04.2020 would not be applicable as it relates to the future consequences of carry forward and set off of losses of a company where change in the shareholding takes place pursuant to a resolution plan approved under the IBC. What the resolution plan provides and which is in conformity with the law laid down by the Supreme Court is that on and from the date of approval of the resolution plan by the Tribunal, the same would prevail over the claims of the Income Tax

Department and such claims which are outside the resolution plan for the period covered by the resolution plan would stand extinguished. The impugned notices seek to initiate assessment proceedings under Section143 (3) of the Act for a period which is squarely covered by the resolution plan as approved by the Tribunal.

73 In the circumstances, impugned notices dated 22.09.2019, 21.10.2019 and 30.10.2019 being wholly unsustainable in law are hereby set aside and quashed.

74 Writ petition is accordingly allowed. However, there shall be no order as to costs. Miscellaneous petitions if any pending in this writ petition shall stand closed.

UJJAL BHUYAN, J

Dr.CHILLAKUR SUMALATHA, J

Date: 18.01.2022.

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