2025 INSC 375

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 49 OF 2022

Vaibhav Goel & Anr. ... Appellants

versus

Deputy Commissioner of Income Tax & Anr. ... Respondents

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL DETAILS

1. This appeal under Section 62 of Insolvency and Bankruptcy Code, 2016 (for short, 'the IB Code') takes an exception to the judgment and order dated 25th November 2021 passed by the National Company Law Appellate Tribunal ('the NCLAT'). The Corporate Insolvency Resolution Process (CIRP) was initiated concerning the corporate debtor M/s. Tehri Iron and Steel Casting Ltd. ('the CD'). The appellants are the Joint Resolution Applicants. They submitted a Resolution Plan dated 21st January 2019. The National Company Law Tribunal ('the NCLT'), vide its order dated 21st May 2019, approved the Resolution Plan submitted by the appellants.

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2. The Resolution Plan had referred to the liability of Rs.16,85,79,469/- (Rupees Sixteen-crores, eighty-five lakhs, seventy-nine thousand, four-hundred and sixty-nine only) of the first respondent (Income Tax Department) for the assessment year 2014-15 based on the demand dated 18th December 2017 which was rectified under section 154 of the Income Tax Act, 1961 (for short, 'the IT Act'). The liability was shown in the Resolution Plan under the heading "Contingent liabilities". After the approval of the Resolution Plan, the first respondent issued demand notices dated 26th December 2019 and 28th December 2019 under the IT Act concerning assessment years 2012-13 and 2013-14, respectively, in respect of the CD. However, admittedly, no claim about the demands for the two assessment years was submitted before the Resolution Professional. The second respondent, the Monitoring Professional, addressed a letter to the first respondent, contending that the demands for the two aforesaid assessment years were unsustainable in law. As the first respondent issued a letter dated 2nd June 2020 asserting the said demands, the second respondent applied to the NCLT for declaring that the demands made by the first respondent pertaining to assessment years 2012-13 and 2013-14 were invalid. It was urged that the said demands were invalid as no claim in respect thereof was made before the Resolution Professional until the Resolution Plan was

approved by the order dated 21st May 2019. By the order dated 17th September 2020, the NCLT dismissed the application, holding it to be frivolous. The costs of Rs.1 lakh were made payable by the appellants and the second respondent. Being aggrieved by the said order, an appeal under Section 61 of the IB Code was preferred before the NCLAT. By the impugned judgment and order dated 25th November, 2021, the NCLAT dismissed the said appeal.

SUBMISSIONS

3. The learned senior counsel appearing for the appellants submitted that the NCLT dismissed the application made by the second respondent without assigning any reasons. He pointed out that though no claim was received from the first respondent pertaining to the assessment year 2014-15 till the submission of the Resolution Plan, the Resolution Professional by itself admitted the liability of payment of income tax for the assessment year 2014-15, which was pending as a contingent liability of the CD. He relied upon a decision of this Court in the case of ***Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta & Ors***.[1]. He submitted that the issue was squarely covered by a decision of a Bench of three Hon'ble Judges of this court in the case of ***Ghanashyam Mishra and Sons Pvt. Ltd.***

[1] (2020) 8 SCC 531

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through the authorised signatory v. Edelweiss Asset Reconstruction Company Ltd. through the Directors & Ors.[2]. However, the NCLAT has brushed aside the said binding decision. He, therefore, submitted that the impugned orders of NCLT and NCLAT deserve to be quashed and set aside.

4. Learned ASG appearing for the first respondent supported the impugned orders. He relied upon paragraph 44 of the order dated 21st May 2019 passed by the NCLT, which rejected the request for relief and concession with respect to statutory dues and observed that the issues are left to be decided by respective government departments. He, therefore, submitted that the NCLAT had rightly dismissed the appeal.

CONSIDERATION OF SUBMISSIONS

5. It is an admitted position that the first respondent did not make any claim regarding income tax dues of the CD for the assessment years 2012-13 and 2013-14. In sub-clause (e) of Clause 2 of the approved Resolution Plan, under the heading 'Settlement of Outstanding Liabilities', it was provided thus:

> "…. .. ..
>
> The Resolution Applicant however understands from the information made

[2] (2021) 9 SCC 657

> available, all does (*sic* dues*)* pertaining to the Statutory Liabilities being paid on time. **Therefore, the Resolution Applicant proposes to pay all Statutory Liabilities as appearing in the balance sheet of CIRP commencement date i.e. 31.05.2018 in the normal course of business.**
>
> **Post payment as stated above, the entire Statutory due shall stand satisfied, settled and extinguished, and no claims whatsoever, of any nature, shall subsist**."
>
> (emphasis added)

In sub-clause (g) of Clause 2 of the Resolution Plan, contingent liabilities have been mentioned. One of the contingent liabilities mentioned is Income-tax liability as regards the assessment year 2014-15 in the sum of Rs.16,85,79,165/- (Rupees Sixteen-crores, eighty-five lakhs, seventy-nine thousand, one-hundred and sixty-five only). The Resolution Plan provides for the manner of resolution regarding the said contingent liabilities.

6. We have perused NCLT's order dated 21st May 2019, which approved the Resolution Plan. Paragraph 46 of the said order reads thus:

> "It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees of the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan."

The first respondent has relied upon paragraph 44 of the said order, which read thus:

> "In the resolution plan, relief and concession has been sought in respect of statutory dues for making payment in instalments, no coercive action, waiver of requirement of pre-deposit for filing appeals, waiver of interest, penal interest or damages. These are issues to be decided by the respective government department and appropriate application may be moved before them."

Now, the question is whether paragraph 44 has any relevance to the demands for income tax that were raised after the date of approval of the Resolution Plan. Sub-clause (g) of clause 2 of the Resolution Plan seeks relief and concessions referred to in paragraph 44 referred above. The sub-clause (g) relates to the contingent liabilities mentioned in clause 2. The income-tax liabilities for the assessment years 2012-13 and 2013-14 have not been shown as contingent liabilities under the Resolution Plan. Hence, what is observed in paragraph 44 is not relevant at all.

7. Section 31(1) of the IB Code provides for the legal effect of approval of the Resolution Plan. Section 31(1) reads thus:

> "(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, **it shall by order approve the resolution plan which 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.**
>
> Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."
>
> (emphasis added)

The words starting from 'including' and ending with 'owed' were incorporated in the IB Code with effect from 16th August 2019. Section 31(1), as it stood before the amendment mentioned above and after the amendment, came for consideration in the decision of this Court in the case of ***Ghanashyam Mishra and Sons Pvt. Ltd.***[2] Paragraph 102 of the said decision reads thus:

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

102.1. 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.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. 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**."
>
> (emphasis added)

8. In view of the declaration of law made by this Court, all the dues including the statutory dues owed to the Central Government, if not a part of the Resolution Plan, shall stand extinguished and no proceedings could be continued in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 of the IB Code. In this case, the income tax dues of the CD for the assessment years 2012-13 and 2013-14 were not part of the approved Resolution Plan. Therefore, in view of sub-section (1) of Section 31, as interpreted by this Court in the above decision, the dues of the first respondent owed by the CD for the assessment years 2012-13 and 2013-14 stand extinguished.

9. We may note here that the decision of this Court in the case of ***Ghanashyam Mishra and Sons Pvt. Ltd.***[2] was specifically relied upon before the NCLAT. The decision of this Court was brushed aside by the NCLAT, firstly on the ground that the said decision was not relied upon before NCLT and, secondly, on the ground that the appellants have not challenged the Resolution Plan. Unfortunately, the NCLAT has ignored the binding

precedent and the legal effect of the approval of the Resolution Plan as laid down in paragraphs 102.1 to 102.3 of the aforementioned decision. The reason given by NCLAT that the decision of this Court cannot be considered as it was not cited before the NCLT is perverse.

10. Before we part with this judgment, we may note that on the application made by the second respondent, the NCLT issued notice to the first respondent by order dated 27th August 2020. However, by the order dated 17th September 2020, which was impugned before the NCLAT, without considering the merits and without recording reasons, the NCLT held that the application was frivolous as the second respondent was seeking relief, which the Bench did not consider at the time of the approval of the Resolution Plan. The NCLT also imposed costs of Rs. one lakh on the appellants and the second respondent. We cannot approve NCLT's approach of not considering the application on merits and dismissing the same without recording any reasons and also by imposing costs. The order of payment of costs was unwarranted.

11. In view of the above discussion, the Resolution Plan approved on 21st May 2019 is binding on the first respondent. Therefore, the subsequent demand raised by the first respondent for the assessment years 2012-13 and 2013-14 is invalid.

12. Once the Resolution Plan is approved by the NCLT, no belated claim can be included therein that was not made earlier. If such demands are taken into consideration, the appellants will not be in a position to recommence the business of the CD on a clean slate. On this aspect, we may note what is held in paragraph 107 of the decision of this Court in the case of ***Committee of Creditors of Essar Steel India Ltd***[1]. Paragraph 107 reads thus:

> **"107.** For the same reason, the impugned NCLAT judgment [*Standard Chartered Bank* v. *Satish Kumar Gupta*, 2019 SCC OnLine NCLAT 388] 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 successfully 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 a fresh slate, as has been pointed out by us hereinabove.** For these reasons, NCLAT judgment must also be set aside on this count."
>
> (emphasis added)

13. The additional demands made by the first respondent in respect of the assessment years 2012-13 and 2013-14 will operate as roadblocks in implementing the approved Resolution Plan, and appellants will not be able to restart the operations of the CD on a clean slate.

14. We, therefore, hold that the demands raised by the first respondent against the CD in respect of assessment years 2012-13 and 2013-14 are invalid and cannot be enforced. We set aside the impugned orders of NCLT and NCLAT and allow the appeal accordingly.

.....J.
(Abhay S Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
March 20, 2025.

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