

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

ORIGINAL SIDE

RESERVED ON: 24.04.2025

DELIVERED ON: 02.05.2025

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

W.P.O. 1106 OF 2024

SREI INFRASTRUCTURE FINANCE LIMITED AND ANR.

VERSUS

THE KOLKATA MUNICIPAL CORPORATION AND ORS.

Appearance:-

Mr. Sakya Sen, Sr. Adv.

Mr. Sankarsan Sarkar, Adv.

Mr. Aditya Kanodia, Adv.

Mrs. Shreya Trivedi, Adv.

.....For the Petitioners

Mr. Biswajit Mukherjee, Adv.

Mr. Gurudas Mitra, Adv.

Ms. Manisha Nath, Adv.

.....For the KMC

JUDGMENT

Gaurang Kanth, J.

1. In the present writ petition, the petitioner is assailing the notices dated 04.06.2024 (Annexure P-5), the supplementary bills dated 16.06.2024 (Annexure P-6), and the letter of intent and notice of demand both dated

16.11.2024 (Annexure P-7) issued by the respondent municipal corporation against the petitioner No. 1 herein. Vide these documents, the respondent municipal corporation retrospectively enhanced the annual value of the property in question, w.e.f 2017 and raised the enhanced property tax demands accordingly.

2. The facts leading to the present case are as follows:
3. It is the case of the petitioners that petitioner No. 1 is the absolute owner of land measuring 43 Cottahs, 9 Chittacks, and 21 square feet, along with a B+G+7 storied building having a super built-up area of 8,483.80 square feet, comprising the 1st to 7th floors (North-East Block), a reception desk on the ground floor, and six open car parking spaces located at the rear side of the ground floor of the building known as *Vishwakarma Building*, situated at Premises No. 86C, Topsia Road (South), Police Station - Tiljala, Kolkata (hereinafter referred to as the "said premises").
4. Petitioner No. 1 is a Non-Banking Financial Company (NBFC) holding a valid license from the Reserve Bank of India (RBI). On 04.10.2021, the RBI superseded the Board of Directors of petitioner No. 1 and appointed an administrator in respect of the said company.
5. Pursuant to an application filed by the RBI under the Insolvency and Bankruptcy Code, 2016 (IBC), the Learned Adjudicating Authority was pleased to admit the said application and, by an order dated 08.10.2021, initiated the Corporate Insolvency Resolution Process (CIRP) in respect of

petitioner No. 1. By the same order, the administrator appointed by the RBI on 04.10.2021 was continued as the administrator for petitioner no. 1. A moratorium under the IBC also came into effect on 08.10.2021. The resolution plan proposed by the National Asset Reconstruction Company Ltd. was approved by the Adjudicating Authority under the IBC on 11.08.2023.

6. On 04.06.2024, the petitioner received four separate notices issued by the Respondent Municipality under various provisions of the Kolkata Municipal Corporation Act, 1980, proposing to revise the annual valuation of the said premises retrospectively under the Unit Area Assessment method. According to the said notices, the proposed annual values were as follows:

With effect from 01/2017: Rs. 45,45,030/-

With effect from 02/2021: Rs. 86,41,970/-

With effect from 02/2022: Rs. 1,22,15,300/-

With effect from 02/2023: Rs. 1,39,89,950/-

7. The petitioner submitted objections to the proposed revisions on 27.06.2024. However, it is the petitioner's case that the respondent corporation, without duly considering the objections raised, finalized the annual values as originally proposed in the notices dated 04.06.2024. Subsequently, supplementary bills dated 16.07.2024 were issued on the basis of the revised valuations. On or about 16.11.2024, the respondent authorities affixed a letter of intimation demanding a total outstanding

amount of Rs. 70,15,637/-, along with interest and penalties, in relation to the said supplementary bills.

8. Being aggrieved by the said demand, the petitioner has preferred the present writ petition.

Arguments on behalf of the Petitioner

9. Learned Counsel for the petitioner submits that vide the impugned notices, the respondent corporation sought to enhance the annual value of the premises in question with retrospective effect from 2017. Prior to the retrospective enhancement of the annual value of the premises in question, the annual value of the said premises for the period from 01/2016 to 04/2022 was Rs. 7,38,500/- and for the period from 01/2023 to 04/2024 was Rs. 8,12,350/-. The petitioners have been paying the property tax from time to time on the expected rent or annual value system as per the demand raised by the respondent corporation.
10. Learned Counsel for the petitioner further submits that vide 4 separate notices dated 04.06.2024, the respondent corporation enhanced the annual value of the premises in question retrospectively w.e.f 2017. Out of the 4 impugned notices, dated 04.06.2024, the first one was issued under Section 174 of the KMC Act for the period from 01/2017 to 01/2021. The subsequent annual valuations are revisions of the proposed annual valuation under Section 180(2) (ii) of the KMC Act. Hence, if the 1st notice which was issued under Section 174 of the KMC

Act is bad in law by virtue of IBC, 2016, the subsequent revisions are also illegal and not valid.

11. Learned Counsel further submits that, in view of Sections 31 and 32A of the IBC, all claims up to the date of approval of the Resolution Plan under the IBC i.e., up to 11.08.2023 stood extinguished by operation of law. The impugned notices pertain to a period prior to 11.08.2023. Since all such claims and demands of the respondents stood extinguished, the impugned notices issued by the respondent corporation in respect of the period prior to the approval of the Resolution Plan are not tenable in law.
12. Learned Counsel for the petitioner further submits that the IBC contemplates and prescribes a specific mode and manner for lodging claims in respect of a company undergoing the Corporate Insolvency Resolution Process (CIRP). The respondent authorities, having failed to avail themselves of such a process, are now attempting to arm-twist the petitioners by saddling the new management with illegal demands pertaining to past periods, even though such claims and demands stood extinguished. The new management of petitioner No. 1, being the National Asset Reconstruction Company Limited (NARCL), is entitled to run the company with a clean slate. The impugned notices, therefore, are contrary to the provisions of law, *ex facie* bad, invalid, and liable to be set aside.
13. In support of these submissions, Learned Counsel for the petitioner relies upon the judgments of the Hon'ble Supreme Court in ***CIT Vs Monnet***

Ispat & Energy Ltd reported as ***2018(18) SCC 786, Ruchi Soya Industries Vs UOI*** reported as ***2022 (6) SCC 243, Essar Steel India Ltd, Committee of Creditors Vs Satish Kumar Gupta*** reported as ***2020 (8) SCC 531, Ghanshyam Mishra & Sons Pvt Ltd Vs Edelweiss Assest Reconstruction Co Ltd reported as 2021 (9) SCC 657, Vaibhav Goel & Anr. vs. Deputy Commissioner of Income Tax,*** reported as ***2025 SCC OnLine SC 592.***

14. With these submissions, Learned Counsel for the petitioner prays for the quashing of the impugned notices and subsequent demands issued by the respondent corporation.

Arguments on behalf of the Respondent Municipality

15. Learned Counsel for the respondent corporation vehemently refutes the submissions made on behalf of the petitioners. At the very outset, the respondent corporation itself raised an issue of maintainability of the present writ petition, contending that the present writ petition has not been filed through proper authority.
16. Learned Counsel further submits that under the Unit Area Assessment system, it is the statutory duty of the assessee to submit a self-assessment return in terms of Section 182A of the Kolkata Municipal Corporation Act, 1980. In the event of failure to file such return, the Municipal Commissioner is empowered to make a *suo motu* assessment. The writ petitioner failed to submit the self-assessment return as required under Section 182A of the KMC Act, 1980. Consequently, the

respondent corporation, relying on various sources including leave and license agreements entered into between the writ petitioner and its tenants, initiated the process of fixing the annual value. As the petitioner failed to submit its objections within the stipulated period, the proposed valuation was finalized by operation of law.

17. Learned Counsel for the respondent corporation further submits that, by not filing the self-assessment return under Section 182A of the KMC Act, 1980, the writ petitioner deliberately withheld material facts and figures, thereby suppressing the true rental values with the intent to depress the valuation and pay lesser tax. It is the contention of the respondent corporation that the writ petitioner committed fraud upon the Corporation, and hence, it is within the jurisdiction of the corporation to revise the valuation retrospectively once the fraud came to light.
18. Learned Counsel for the respondent further submits that the respondent corporation was not aware of the IBC proceedings and, therefore, could not submit its claims prior to the approval of the Resolution Plan. Moreover, the appropriate authority, while considering the reliefs, waivers, and concessions sought by the Corporate Debtor, expressly stated that:

“No reliefs, waivers, and concessions that fall within the domain of other Government departments/authorities are granted. The reliefs, waivers, and concessions that pertain to other Government authorities/departments shall be dealt with by the respective competent authorities/forums/offices, whether Government or

Semi-Government, of the State or Central Government, with regard to the respective reliefs, waivers, and concessions.”

In view of the above, the respondent corporation submits that its outstanding dues towards property tax cannot be treated as extinguished.

17. In light of these submissions, Learned Counsel for the respondent prays for dismissal of the present writ petition.

Legal Analysis

19. This Court heard the arguments advanced by both the parties and examined the documents placed on record.
20. The respondent corporation raised an objection qua the maintainability of the present writ petition. Perusal of the record reveals that the present writ petition has been filed by petitioner No. 1 through petitioner No.2 who is duly authorized by the Board of Directors of the petitioner No. 1 to represent the petitioner No. 1 in the present proceedings. This Court finds no infirmity in the said authorization and therefore, rejects the preliminary objection raised by the respondent corporation qua the maintainability of the present writ petition.
21. The main thrust of the argument advanced by the petitioner is that once the Resolution Plan is approved by the competent authority, all claims up to the date of such approval stand extinguished. Therefore, even government dues cannot be recovered from the petitioner for the period prior to the approval of the Resolution plan.

22. Before examining the facts of the present case, this Court would like to examine the law in this filed.
23. The Insolvency and Bankruptcy Code, 2016 (IBC) lays down the framework for resolution plans. Section 30 provides for the submission of a resolution plan. As per Section 30(1), a resolution applicant may submit a resolution plan, along with an affidavit stating that he is eligible under Section 29A, to the resolution professional. The plan must be prepared based on the information memorandum in terms of Section 29. Under Section 30(2), the resolution professional is required to examine each resolution plan to ensure compliance with the requirements of clauses (a) to (f) of that sub-section. Thereafter, in terms of Section 30(3), the resolution professional must present the resolution plans that conform to the requirements of sub-section (2) to the Committee of Creditors (CoC) for its approval. Section 30(4) provides that the CoC may approve a resolution plan by a vote of not less than 66% of the voting share of the financial creditors, after considering its feasibility and viability. As per Section 30(5), the resolution applicant may also attend meetings of the CoC, though without voting rights unless the applicant is also a financial creditor. Once approved by the CoC, the resolution professional is required to submit the resolution plan to the Adjudicating Authority in terms of Section 30(6).
24. Section 31 deals with the approval of a resolution plan. Under Section 31(1), if the Adjudicating Authority is satisfied that the resolution plan

approved by the CoC meets the requirements of Section 30(2), it shall, by order, approve the resolution plan. Once approved, the resolution plan becomes binding on the corporate debtor and its employees, members, creditors (including the Central Government, any State Government, or any local authority to whom any debt, including statutory dues, is owed), guarantors, and all other stakeholders involved in the resolution plan. However, before granting approval, the Adjudicating Authority must ensure that the resolution plan includes provisions for its effective implementation. As per Section 31(2), if the Adjudicating Authority is not satisfied that the resolution plan conforms to the requirements referred to in Section 31(1), it may, by order, reject the resolution plan. Section 31(3) further provides that once a resolution plan is approved under Section 31(1), the moratorium order passed under Section 14 shall cease to have effect.

25. Section 238 of the IBC provides that the provisions of the Code 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.
26. The Hon'ble Supreme Court, in ***Essar Steel India Ltd. (Supra)***, after an elaborate and exhaustive analysis of various provisions of the IBC, concluded that a successful resolution applicant cannot suddenly be confronted with 'undecided' claims after the resolution plan submitted by them has been accepted. Such a situation would be akin to a "hydra

head" emerging, creating uncertainty regarding the amounts payable by a prospective resolution applicant. All claims must be submitted to and decided by the resolution professional, ensuring that the resolution applicant is fully aware of the liabilities that need to be settled before taking over and running the business of the corporate debtor.

27. The Hon'ble Supreme Court, in ***Ghanshyam Mishra & Sons Pvt. Ltd. (Supra)***, examined the specific question of 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 Section 31(1) of the Insolvency and Bankruptcy Code (IBC). The Hon'ble Apex Court held that once a resolution plan is duly approved under Section 31(1) of the IBC, the claims as provided in the resolution plan shall be 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. As of the date of such approval, all claims not included in the resolution plan shall stand extinguished, and no person shall be entitled to initiate or continue any proceedings in respect of such excluded claims. The Hon'ble Supreme Court further declared that all dues, including statutory dues owed to the Central Government, any State Government, or any local authority, if not included in the resolution plan, shall stand extinguished, and no proceedings in respect of such

dues for any period prior to the date of approval by the Adjudicating Authority under Section 31 may be continued.

28. The Hon'ble Supreme Court followed Ghanshyam Mishra (Supra) very recently in ***Vaibhav Goel & Anr Vs Deputy Commissioner of Income Tax (Supra) and Electro Steel Steel Ltd (ESL Steel Limited Vs Ispat Carrier Pvt Ltd*** reported as **2025 SCC Online SC 829** and reiterated that even if any stakeholder is not a party to the proceedings before the NCLT and if such stakeholder does not raise its claim before the interim resolution professional/resolution professional, the resolution plan as approved by the NCLT would still be binding on him.
29. Hence, in view of the settled position of law as discussed herein above, it is evident that all dues, including statutory dues owed to the Central Government, any State Government, or any local authority, if not included in 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 of the IBC may be continued.
30. This being the legal position, this Court now proceeds to examine the facts of the present case.
31. In the present case, the Resolution plan was approved by the NCLT, Kolkata Bench on 11.08.2023. Admittedly the demand raised by the respondent corporation is not part of the resolution plan approved by the

NCLT, Kolkata Bench. In view thereof, all the liabilities towards the respondent corporation prior to 11.08.2023 stands extinguished.

32. This Court also notes that the respondent municipality, vide the impugned notices dated 04.06.2024, sought to retrospectively increase the annual value of the premises in question under the unit area method with effect from 2017, by exercising the powers vested in it under the Kolkata Municipal Corporation Act, 1980. It is the petitioner's case that, although no self-assessment return was ever filed, property tax was being paid to the respondent corporation in accordance with the demands raised by it. To substantiate this claim, learned counsel for the petitioner relied upon the 'All Demand Details' pertaining to the premises in question, bearing Assessee No. 110592206780. The said document reveals that the petitioner was regularly paying property tax in accordance with the demands raised by the respondent corporation up to the date of approval of the Resolution Plan, i.e., 11.08.2023.
33. Be that as it may, in view of the settled legal position as laid down by the Hon'ble Supreme Court in the aforementioned judicial precedents, the demand raised by the respondent corporation up to the date of approval of the Resolution Plan stands extinguished. As regards the subsequent period, i.e., period after 11.08.2023, the respondent corporation is entitled to make assessment in accordance with law.
34. Hence the present writ petition is allowed. All the outstanding statutory dues of the respondent corporation pertaining to the period prior to the

approval of the resolution plan stand extinguished. All the impugned notices, supplementary bills and notices of demands raised by the respondent corporation are hereby quashed.

35. The respondent corporation is at liberty to rework the liabilities of the petitioner for the subsequent period (i.e., period after the approval of the Resolution plan) in accordance with law. Needless to mention that while doing the said exercise, the respondent corporation is expected to comply with the principles of natural justice.
36. With these directions, the present writ petition is disposed of.

(Gaurang Kanth, J.)

Sakil Amed (P.A.)

