

GAHC010092162023



2026:GAU-AS:14627

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3007/2023

MEGHALAYA INFRATECH LIMITED
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING
OFFICE AT BEHIND ASTC BUS STOP KHANAPARA RIBHOI 793101

VERSUS

DEPUTY COMMISSIONER OF INCOME TAX AND 2 ORS
CENTRAL CIRCLE 1 GUWAHATI HAVING ITS OFFICE AT AAYKAR BHAWAN
CHRISTIANBASTI G S ROAD GUWAHTI ASSAM 781005

2:PRINCIPAL COMMISSIONER OF INCOME TAX
GUWAHATI
HAVING ITS OFFICE AT AAYKAR BHAWAN CHRISTIANBASTI G S ROAD
GUWAHTI ASSAM 781005

3:UNION OF INDIA
THROUGH THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF
FINANCE DEPTT. OF REVENUE NORTH BLOCK NEW DELHHI 1100

Advocate for the Petitioner : MR. KAPIL GOEL, MR. P DAS

Advocate for the Respondent : SC, INCOME TAX,

Linked Case : WP(C)/3001/2023

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BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. K. Goel, Advocate

For the Respondent(s) : Mr. S. Chetia, Standing Counsel

- Date on which Judgment was reserved : NA
- Date of Pronouncement of Judgment : **30.09.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : NA

JUDGMENT AND ORDER (ORAL)

Heard Mr. K. Goel, the learned counsel appearing on behalf of the Petitioner in both the writ petitions and Mr. S. Chetia, the learned Standing counsel appearing on behalf of the Income Tax Department.

2. On account of the commonality of facts and the similarity of the issue involved, both the writ petitions are taken up for disposal by this common judgment and order.

3. WP(C) No. No.3001/2023 is for the Assessment Year 2011–12 and WP(C) No. 3007/2023 is for the Assessment Year 2016–17.

4. The issue which arises for consideration in both the writ petitions is as to whether the Demand Notices for the two Assessment Years i.e. 2011-12 and 2016-17 though raised subsequent to the Resolution Plan having been accepted by the learned National Company Law Tribunal, Guwahati (for short, 'NCLT') on 18.05.2020 can be sustained in law in view of Section 31 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code')?

BRIEF FACTS OF THE CASES:

5. The Petitioner company is an assessee under Section 2(7) of the Income Tax Act, 1961, (for short 'the Act of 1961').

6. The materials on record show that an application being CP(IB) No. 13/GB/2019 was filed under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) in respect to the

Petitioner Company by the Allahabad Bank. The learned NCLT vide an order dated 28.08.2019 admitted the application and the CIRP came to be initiated in respect to the Petitioner Company. One Mr. Amit Pareek was appointed as the Interim Resolution Professional who was subsequently confirmed as the Resolution Professional in the 1st Committee of Creditors. There were four Resolution Applicants who submitted their respective Resolution Plans. In the Committee of Creditors meeting held on 11–12 of February, 2020, the Resolution Applicant, namely Mr. Ngaitlang Dhar emerged as the H-1 bidder, whereas one Mr. Abhishek Agarwal emerged as the H-2 bidder.

7. In the 7th Committee of Creditors meeting held on 6th of March, 2020, with a 100% voting share, approved the Resolution Plan of Mr. Ngaitlang Dhar. Subsequent thereto, on an application filed before the learned NCLT, the Resolution Plan submitted by Mr. Ngaitlang Dhar was approved on 18.05.2020.

8. It is relevant to take note of that against the said approval granted by the learned NCLT, an Appeal thereagainst was filed before the National Company Law Appellate Tribunal, New Delhi challenging the order dated 18.05.2020 passed by the learned NCLT. The said Appeal was allowed by the learned National

Company Law Appellate Tribunal, New Delhi, vide an order dated 19.10.2020. Being aggrieved, the Mr. Ngaitlang Dhar filed an Appeal before the Supreme Court which was registered and numbered as Civil Appeal No. 3665–3666 of 2020. Along with that, the Resolution Professional also filed Civil Appeal No. 3742–3743 of 2020. The Supreme Court, vide a detailed judgment and order dated 17.12.2021 interfered with the judgment and order passed by the National Company Law Appellate Tribunal dated 19.10.2020 and upheld the order dated 18.05.2020 passed by the learned NCLT.

9. Subsequent thereto, notices were issued to the Petitioner under Section 153C of the Act of 1961 for the Assessment Years 2011–12 and 2016–17. The records further reveal that assessment orders were passed for the Assessment Years 2011-12 and 2016-17 on 29.03.2023 and Notices of Demand both dated 29.03.2023 were issued.

10. For the Assessment Year 2011–12, the assessment order was passed on 29.03.2023, whereby an amount of Rs.83,00,000/- was added to the total income of the assessee. Accordingly, upon adding the said income, an amount of Rs.1,01,56,212/- was determined to be payable by the Petitioner.

11. Insofar as the Assessment Year 2016–17, assessment order was passed on 29.03.2023 whereby Rs.10,55,00,000/- was added to the total income of the assessee. Accordingly, an amount of Rs.6,71,81,020/- was determined as payable by the Petitioner.

12. Being aggrieved, the Petitioner had filed the present writ petitions challenging the assessment orders as well as the Notices of Demand on the ground that in respect to the Assessment Years 2011–12 and 2016–17, no proceedings could have been initiated upon the successful Resolution Applicant after the Resolution Plan was approved by learned NCLT vide order dated 18.05.2020.

13. This Court takes note of that the learned Coordinate Bench of this Court vide an order dated 29.05.2023 in both the writ petitions issued notice and further directed that that the assessment orders and the Demand Notices dated 29.03.2023 for the Assessment Years 2011–12 and 2016–17 shall not be put to execution/recovery. The interim orders thereupon have been continuing. A period of 3 (three) years had elapsed, however, the Income Tax Department for the reasons best known, have not taken any steps for filing their response.

14. From the materials on record, nothing could be discerned that

there are disputes on the material facts involved. It is only on the applicability of the proposition of law where the parties to the present proceedings contest.

SUBMISSIONS MADE ON BEHALF OF THE LEARNED COUNSELS FOR THE PARTIES:

15. Mr. K. Goel, the learned counsel appearing on behalf of the Petitioner in both the writ petitions submitted that the issue involved in the present proceedings is squarely covered by the recent judgment of the Supreme Court in the case of ***Vaibhav Goel and Another Vs. Deputy Commissioner of Income Tax and Another reported in (2025) 8 SCC 511***. The learned counsel submitted that the issue involved in the proceedings before the Supreme Court pertained to the Assessment Years 2012–13 and 2013–14 and the Resolution Plan was approved on 21.05.2019 and it was under such circumstances, the Demand Notices which were issued subsequently on 26.12.2019 and 28.12.2019 under the Act of 1961 concerning the Assessment Years 2012–13 and 2013–14 was held to be *non est* in view of the clean slate doctrine expounded by the Supreme Court in terms with Section 31 of the Code.

16. The learned counsel for the Petitioner further submitted that the in the instant case, the assessment years are of the year 2011–

12 and 2016–17 and the Resolution Plan was approved on 18.05.2020. The subsequent initiation of the proceedings as well as the assessment orders and the Notices of Demand all dated 29.03.2023 would fall within the mischief of Section 31 of the Code and, as such, not permissible. He therefore submitted that this is a fit case wherein the proceedings which were initiated under Section 153C of the Act of 1961, and the subsequent assessment orders as well as the Demand Notices dated 29.03.2023 for the Assessment Years 2011–12 and 2016–17 are required to be set aside and quashed.

17. Mr. S. Chetia, the learned Standing counsel appearing on behalf of the Respondent Income Tax Department submitted that as both the assessment orders are appealable orders under the Act of 1961, this Court may not like to entertain both the writ petitions. The learned counsel further submitted that the Income Tax Act, 1961 as well as the Insolvency and Bankruptcy Code, 2016 are separate enactments working in different spheres and as such, the proceedings which were initiated under Section 153C of the Act of 1961 and the subsequent assessment orders along with the Notices of Demand dated 29.03.2023 for the Assessment Years 2011–12 and 2016–17 need not be set aside and quashed.

18. Mr. S. Chetia the learned Standing counsel on merits further submitted that subsequent to the order dated 18.05.2020, it came to light from the various documents that for the Assessment Years 2011-12 and 2016-17, the income was under assessed and there were various bogus transactions. As these came to light only subsequent to the Resolution Plan have been approved, fresh assessments were carried out in terms with the provisions of the Act of 1961 and as such, Section 31 of the Code would have no application.

ANALYSIS AND DETERMINATION:

19. Let this Court first take up the question of alternative and efficacious remedy available under the Act of 1961 against the impugned assessment orders both dated 29.03.2023. This Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***M/S Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer cum Assessing Authority and Ors. reported in (2025) 11 SCC 808***, wherein the Supreme Court categorically observed that where pure questions of law are involved without there being any disputed question of facts, the High Court should not relegate the matter to the statutory authorities.

20. In the instant case, the question of law arises as to the

exercise of jurisdiction of the Assessing Officer to carry out an assessment in respect to a period prior to the acceptance of the Resolution Plan but subsequent to the Resolution Plan having been accepted by the learned NCLT on 18.05.2020. Additionally, the present proceedings also raises questions on the interpretation of Section 31(1) of the Code.

It is therefore the opinion of this Court that the question of relegating the Petitioner to the statutory authorities does not arise in the present facts and circumstances.

21. Now, let this Court deal on merits. The impugned assessment orders both dated 29.03.2023 are for the Assessment Years 2011-12 and 2016-17. The CIRP proceedings were filed by the Allahabad Bank and the learned NCLT vide an order dated 28.08.2019 admitted the application thereby initiating the CIRP proceedings. The Committee of Creditors had approved the application filed by the Resolution Applicant namely Mr. Ngaitlang Dhar in the meeting held on 6th of March, 2020. Subsequent thereto, after certain modification, the Resolution Plan was approved by the learned NCLT vide order dated 18.05.2020. The said order dated 18.05.2020 was confirmed by the Supreme Court in the judgment and order dated 17.12.2021.

22. Section 31(1) of the Code stipulates that upon the Adjudicating Authority being satisfied that the Resolution Plan, as approved by the Committee of Creditors under Sub-Section (4) of Section 30 of the Code, meets the requirements as referred to in Sub-Section (2) of Section 30, the Adjudicating Authority would approve the Resolution Plan. In the instant case, the learned NCLT approved the Resolution Plan on 18.05.2020.

23. The effect of the Approval of the Resolution Plan is that it binds not only the corporate debtor and its employees, members and creditors, but also the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is owed, such as authorities to whom statutory dues are owed, as well as the guarantors and other stakeholders involved in the Resolution Plan.

24. In the instant case, the Assessment Years are 2011-12 and 2016-17 and the dues which are payable under the Act of 1961 were dues which were payable at the time of filing the returns of income. The bogus transactions as alleged by the Respondents or for that matter, under assessing the income were much prior to the approval of the Resolution Plan dated 18.05.2020. Under such

circumstances, upon the Approval of the Resolution Plan on 18.05.2020, the contents of the approved Resolution Plan binds even the Central Government insofar as payment of dues under the Act of 1961 for the Assessment Years 2011-12 and 2016-17. In this regard, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***Vaibhav Goel (supra)***, wherein the issue involved was as to whether the assessment orders as well as the demand so made for the Assessment Years 2012–13 and 2013–14, subsequent to the Resolution Plan having been approved on 21.05.2019, would be maintainable. The Supreme Court upon dealing with the various propositions of law held that once the Resolution Plan is approved by the NCLT, no belated claims can be included therein that was not made earlier. The Supreme Court further observed that if such demands are taken into consideration, the very principle of the Resolution Applicant continuing with the business with a clean slate would become otiose. Paragraph Nos. 12, 13, 14, 15, 16 and 17 of the said judgment in the case of ***Vaibhav Goel (supra)*** are reproduced herein under:

“12. 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 Ghanashyam Mishra & Sons. Para 102 of the said decision reads thus: (SCC p. 716)

“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 supplied)

13. *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 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 Assessment Years 2012-13 and 2013-14 stand extinguished.

14. *We may note here that the decision of this Court in Ghanashyam Mishra & Sons was specifically relied upon before NCLAT. The decision of this Court was brushed aside by 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, NCLAT has ignored the binding precedent and the legal effect of the approval of the resolution plan as laid down in paras 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 NCLT is perverse.*

15. *Before we part with this judgment, we may note that on the application made by the second respondent, NCLT issued notice to the first respondent by order dated 27-8-2020. However, by the order dated 17-9-2020, which was impugned before NCLAT, without considering the merits and without recording reasons, 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. 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.*

16. *In view of the above discussion, the resolution plan approved on 21-5-2019 is binding on the first respondent. Therefore, the subsequent demand raised by the first respondent for Assessment Years 2012-13 and 2013-14 is invalid.*

17. *Once the resolution plan is approved by 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 para 107 of the decision of this Court in Essar Steel (CoC). Para 107 reads thus: (SCC p. 616)*

“107. 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 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 supplied)”

25. In view of the above exposition of law by the Supreme Court in the case of **Vaibhav Goel (supra)**, this Court therefore, disposes of both the writ petitions with the following observations and

directions:

- (i) The proceedings which were initiated by issuance of notices under Section 153C of the Act of 1961 for the Assessment Years 2011–12 and 2016–17, after the Resolution Plan was approved by the learned NCLT on 18.05.2020, were without jurisdiction in the prevailing facts and circumstances.
- (ii) The assessment order dated 29.03.2023 in respect of the Assessment Year 2011–12 in relation to the Petitioner and the corresponding Notice of Demand dated 29.03.2023, for the Assessment Year 2011–12 are hereby set aside and quashed.
- (iii) The assessment order dated 29.03.2023 in respect of the Assessment Year 2016–17 in relation to the Petitioner and the corresponding Notice of Demand dated 29.03.2023, for the Assessment Year 2016–17 are hereby set aside and quashed.
- (iv) There shall be no order as to costs.

Bijoy Saha Digitally signed by Bijoy
Saha
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JUDGE

Comparing Assistant