**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 2

## Excise Appeal No. 252 of 2011

(Arising out of Order-in-Original No. CCE/BBSR-I/16-20/2011 dated 31.01.2011 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa)

**M/s. Tata Steel Limited : Appellant**
Regd. Office: Bombay House, 24-Homi Mody Street, Fort, Mumbai, Maharashtra – 400 001
[Formerly:
*M/s. Tata Steel BSL Ltd., Ground Floor, Mira Corporate Suites, Plot No. 1 & 2, Ishwar Nagar Mathura Road, New Delhi – 110 065/ 'M/s. Bhushan Steel Limited, Meramandali, District: Dhenkanal, Orissa*]

**VERSUS**

**Commissioner of Central Excise, Customs and Service Tax : Respondent**
Bhubaneswar-I Commissionerate
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa

**WITH**

## Excise Appeal No. 281 of 2011

(Arising out of Order-in-Original No. CCE/BBSR-I/21/2011 dated 04.02.2011 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa)

**M/s. Tata Steel Limited : Appellant**
Regd. Office: Bombay House, 24-Homi Mody Street, Fort, Mumbai, Maharashtra – 400 001
[Formerly:
*M/s. Tata Steel BSL Ltd., Ground Floor, Mira Corporate Suites, Plot No. 1 & 2, Ishwar Nagar Mathura Road, New Delhi – 110 065/ 'M/s. Bhushan Steel Limited, Meramandali, District: Dhenkanal, Orissa*]

**VERSUS**

**Commissioner of Central Excise, Customs and Service Tax : Respondent**
Bhubaneswar-I Commissionerate
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa

**WITH**

## Excise Appeal No. 704 of 2011

(Arising out of Order-in-Original No. CCE/BBSR-I/03/2011 dated 28.04.2011 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa)

**M/s. Tata Steel Limited : Appellant**
Regd. Office: Bombay House, 24-Homi Mody Street, Fort, Mumbai, Maharashtra – 400 001
[Formerly:

*M/s. Tata Steel BSL Ltd., Ground Floor, Mira Corporate Suites, Plot No. 1 & 2, Ishwar Nagar Mathura Road, New Delhi – 110 065/ 'M/s. Bhushan Steel Limited, Meramandali, District: Dhenkanal, Orissa*]

**VERSUS**

**Commissioner of Central Excise, Customs and Service Tax** : **Respondent**
Bhubaneswar-I Commissionerate
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa

**WITH**

## Excise Appeal No. 652 of 2012

(Arising out of Order-in-Original No. CCE/BBSR-I/05/2012 dated 15.05.2012 (issued on 24.07.2012) passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa)

**M/s. Tata Steel Limited** : **Appellant**
Regd. Office: Bombay House, 24-Homi Mody Street, Fort, Mumbai, Maharashtra – 400 001
[Formerly:
*M/s. Tata Steel BSL Ltd., Ground Floor, Mira Corporate Suites, Plot No. 1 & 2, Ishwar Nagar Mathura Road, New Delhi – 110 065/ 'M/s. Bhushan Steel Limited, Meramandali, District: Dhenkanal, Orissa*]

**VERSUS**

**Commissioner of Central Excise, Customs and Service Tax** : **Respondent**
Bhubaneswar-I Commissionerate
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa

**AND**

## Excise Appeal No. 653 of 2012

(Arising out of Order-in-Original No. CCE/BBSR-I/05/2012 dated 15.05.2012 (issued on 24.07.2012) passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa)

**Commissioner of Central Excise, Customs and Service Tax** : **Appellant**
Bhubaneswar-I Commissionerate
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Orissa

**VERSUS**

**M/s. Tata Steel Limited** : **Respondent**
Regd. Office: Bombay House, 24-Homi Mody Street, Fort, Mumbai, Maharashtra – 400 001
[Formerly:
*M/s. Tata Steel BSL Ltd., Ground Floor, Mira Corporate Suites, Plot No. 1 & 2, Ishwar Nagar Mathura Road, New Delhi – 110 065/ 'M/s. Bhushan Steel Limited, Meramandali, District: Dhenkanal, Orissa*]

**APPEARANCE:**

Shri Kavin Gulati, Senior Advocate for the Appellant
Assisted by Shri Rajesh Chibber, Shri Salona Mittal, Shri Dushyant Sharma, All Advocates, for the Assessee/Company

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent
Assisted by Shri S. Mukhopadhyay,
Authorized Representative for the Revenue

**CORAM:**

**HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)**
**HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)**

**FINAL ORDER NOs. 75665-75669 / 2024**

DATE OF HEARING: 21.02.2024

DATE OF DECISION: 16.04.2024

**Order : [PER SHRI RAJEEV TANDON]**

The following appeals filed by M/s. Bhushan Steel Limited, along with a cross-appeal filed by the Revenue, as listed in the following table, are being taken up for consideration hereunder:

| Sl. No. | Appeal No. | Order-in-Original No. & Dt. | Duty/credit involved (in Rs.) |
|---|---|---|---|
| 1. | E/252/2011 | OIO No. CCE/BBSR-I/16-20/2011 dtd.31.01.2011 | 140,46,88,065/- |
| 2. | E/281/2011 | OIO No. CCE/BBSR-I/21/2011 dtd.04.02.2011 | 15,46,214/- |
| 3. | E/704/2011 | OIO No. CCE/BBSR-I/03/2011 dtd.28.04.2011 | 2,74,86,476/- |
| 4. | E/652/2012 | OIO No. CCE/BBSR-I/05/2012 dtd.15.05.2012 | 2,09,40,479/- |
| 5. | E/653/2012 (Dept. appeal) | | 2,69,50,581/-* (credit allowed) |

2. All the appeals essentially concern availment of CENVAT Credit on inputs / capital goods. Cases wherein CENVAT Credit is denied, the appeals have been field by the appellant/company and where CENVAT Credit is allowed, cross-appeal has been filed by the Revenue. At the time of hearing of the stay petitions, the Tribunal was pleased to waive off the penalties levied on the appellant by way of the aforesaid Orders-in-Original in view of the fact and as contended that they had reversed the CENVAT Credit concerned in the said appeals.

2.1 The aforesaid facts are however mentioned only by way of reference for presenting a preliminary aspect of the issue. However, it be noted that subsequent to the filing of the appeals and the various applications filed from time to time seeking early hearing, etc., it has been informed by way of additional submissions that during the pendency of the present appeals, insolvency proceedings against the appellant viz. M/s. Bhushan Steel Ltd.[1] came to be initiated on 26.07.2017 by the State Bank of India under the provisions of the Insolvency and Bankruptcy Code, 2016[2] and an Interim Resolution Professional[3] was appointed, for needful in accordance with the provisions of the Code. The Revenue being an 'operational creditor' within the meaning of Section 5(20) of the Code, also filed its claim for "Operational Debt" before the IRP. Finally, the Resolution Plan submitted by M/s. Tata Steel Ltd. before the Committee of Creditors (CoC) got approved by the National Company Law Tribunal (NCLT) on 15.05.2018. The said order of the NCLT was affirmed

1 - BSL
2 - The Code
3 - IRP

by the National Company Law Appellate Tribunal (NCLAT) vide order dated 10.08.2018. The appellant-company have placed on record a copy of the relevant portion of the Resolution Plan, along with the claim filed by the Revenue and the orders of NCLT and NCLAT as stated above.

2.2 The Corporate Insolvency Resolution Process[4] thus initiated, culminated into the said Resolution Plan submitted by M/s. Tata Steel Ltd. that governed the rights and liabilities of M/s. BSL.

3. Accordingly, a miscellaneous application No. E/76136/2019 was filed for change in the name and cause-title of the appeal No. E/252/2011 in view of the certificate as issued by the Registrar of Companies, incorporating the said change in the name of the appellant-company to "M/s. Tata Steel BSL Limited". The application for change in cause-title was allowed, along with early hearing applications, vide order dated 23.09.2019. It is noted further that subsequent to the Certificate of Incorporation placed on record by the assessee, the change in cause-title was further allowed from "M/s. Tata Steel BSL Limited" to "M/s. Tata Steel Limited" vide order dated 26.09.2023.

3.1 Similar applications filed by the assessee in respect of the other appeals for change in name and cause-title to "M/s. Tata Steel Limited" were also allowed on 21.02.2024.

3.2 During the pendency of the captioned appeals, the name and registered address of the assessee had been changed to:

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4 - CIRP

"M/s. Tata Steel BSL Limited
Ground Floor, Mira Corporate Suites,
Plot No. 1 & 2, Ishwar Nagar Mathura Road,
New Delhi – 110 065"

and currently stands as follows: -

"M/s. Tata Steel Limited
Regd. Office: Bombay House,
24-Homi Mody Street, Fort,
Mumbai, Maharashtra – 400 001"

3.3 The appellant-company underwent CIRP in terms of the Code which culminated into approval of the Resolution Plan submitted by M/s. Tata Steel Limited by the adjudicating authority of the NCLT, Principal Bench, New Delhi [ref. NCLT Order dated May 15, 2018]

4. In view of the aforesaid facts and settled case-laws on the subject, the present appeals undoubtedly get abated in terms of Rule 22 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982[5], as no application for continuance of the said proceedings were tendered by the present owners.

4.1 The relevant clauses 8.2.1 and 8.2.2 of the Resolution Plan on record indicates the liquidation value for the operational creditors, which includes tax dues, as 'NIL' and clearly states that no amounts are to be paid to the operational creditors (refer to clause 8.2.1 and clause 8.2.2 of the Resolution Plan). Likewise, in terms of clauses 8.2.4, 8.2.6, 8.6.10, 8.6.11, 8.7.3 and 8.7.4 of the Resolution Plan read with Annexure-12 thereof, all *sub-judice* claims

5 - The Rules

against the assessee also stand wiped out and extinguished.

4.2 The appellant-company have submitted that the original appellant viz. M/s. BSL had filed the present appeals as they were denied the benefit of input tax credit by the Ld. Commissioner vide Orders-in-Original referred to *supra* and that during the pendency of these appeals, the CENVAT Credit availed was reversed. They therefore submit, in view of the facts as stated above, that though the claim of the Department stands extinguished, a direction is required from this Tribunal to the Department to give back the amount said to be deposited on account of pre-deposit.

5. The aforesaid narration of the factual history of the present appeals is so done as it would help appreciate the course of arguments as undertaken by the appellant during the course of personal hearing held before us on 21.02.2024.

6. Both sides have no qualms over the fact of the impugned appeals being allowed to abate, having been rendered infructuous in view of the aforesaid developments and in keeping with the provisions in law and there being no application on record seeking continuance thereof.

6.1 We therefore, unhesitatingly hold that in the light of the settled legal position, all the appeals herein get abated and dismissed as infructuous.

7. However, this is not the end of the story in the present matters. In fact, it only commences hereon.

8. Shri Kavin Gulati, Ld. Senior Advocate, assisted by Shri Rajesh Chibber, Shri Salona Mittal and Shri Dushyant Sharma, all Advocates, submitted that though the Tribunal in a slew of cases has taken the view that under such circumstances, the appeals filed get abated in view of the provisions of Rule 22 of the Rules [Following cases may be adverted to in this regard:

i. ***Jet Airways (India) Ltd. v. Commissioner of Service Tax, Mumbai, CESTAT, Mumbai, Service Tax Appeal No. 86962 of 2014***

ii. ***Jet Airways (India) Ltd. v. Commissioner of Service Tax, Mumbai, CESTAT, Mumbai, Service Tax Appeal no. 86949 of 2015***

iii. ***V3 Engineers Pvt Ltd. v. Commissioner of Central Tax, Bengaluru, CESTAT, Bengaluru, Excise Appeal No. 3610 of 2012***

iv. ***Ballarpur Industries Ltd. v. CCE & ST, Panchkula, CESTAT, Chandigarh, Service Tax Appeal No. 536 of 2010***

v. ***Orchid Chemicals & Pharma v. The Commissioner of GST & Central Excise, CESTAT, Chennai, Service Tax Appeal No. 42474 of 2014]***

however, the same is not the correct position of law as the said decisions were pronounced *per incuriam.*

8.1 The Ld. Senior Advocate further submitted that in view of their proposition that the aforesaid decisions were rendered *per incuriam*, the impugned issue would need a consideration by the Larger Bench of the Tribunal for the following reasons: -

(a) Refund of pre-deposit sought by them is a 'security deposit' and cannot be construed as tax or duty and drew strength from the following case-laws in support:

i. ***Commr. of Customs (Import) v. Finacord Chemicals (P) Ltd., (2015) 15 SCC 697***

ii. ***Union of India v. Suvidhe Ltd., (2016) 11 SCC 808***

iii. ***Nelco Limited v. Union of India, 2001 SCC OnLine Bom 1251***

iv. ***Goldy Engg. Works v. CCE, (2023) 3 HCC (Del) 781***

(b) While admitting that the appeals would no longer survive, the appellant contends that the amount deposited by way of pre-deposit is required to be returned to them as there is no authority in law for the Department to retain the said amount which was essentially in the nature of a security deposit. For this proposition, they placed reliance on the following decisions:

i. ***Ruchi Soya Industries Ltd. v. Union of India, (2022) 6 SCC 343.***

ii. ***Voltas Ltd. v. UOI, 1998 (47) DRJ (DB)***

iii. ***State of Gujarat v. Essar Steel Ltd., 2016 SCC OnLine Guj 4125.***

iv. ***U.N. Cement Ltd. v. Asst. Commr, CT, MANU/RH/0679/2022***

v. ***Ultratech Nathdwara Cement Ltd. v. Assistant Comm., MANU/RH/0775/2022***

(c) The appellant further submitted that the Tribunal, in terms of the "omnibus powers" vested in it under Rule 41 of the Rules, can give a direction for the refund of pre-deposit by way of execution of its Orders to secure the ends of justice. The learned Senior Advocate on behalf of the appellant-company stated that the

Tribunal enjoys wide ranging powers for such directions to be issued that were incidental and inherent in the Orders of the Tribunal regarding abatement of proceedings. It is their case that in view of the following decisions, the Tribunal does not become *functus officio* in this regard:-

i. ***J.K. Synthetics Ltd v. CCE, (1996) 6 SCC 92***

ii. ***State of Gujarat v. Essar Steel Ltd., 2016 SCC OnLine Guj 4125***

iii. ***U.N. Cement Ltd. v. Asst. Commr, CT, MANU/RH/0679/2022***

(d) Finally, they also submitted that reliance by the Tribunal on Rule 22 of the Rules is inapposite and pointed out that the said Rule applies only in cases of 'winding up' of a company whereas in the instant case 'insolvency process' had been followed under Section 7 of the Code and the company was not actually wound up. They submitted that the Resolution Plan approved in terms of Section 31 of the Code is binding on all, including the Government. It was therefore their contention that the existing entity is merely taken over by a new entity by way of the Resolution Applicant who steps into the shoes of the existing corporate debtor after a successful resolution process. With regard to winding up of the company, they submitted that the same is in accordance with Section 271 of the Companies Act, 2013. Reference is drawn to Section 33 of the Code, submitting that if the NCLT rejects the Resolution Plan under Section 31 of the Code, only then would an order be required to be passed for the liquidation of the existing company; a liquidator then takes over and

disposes of the assets in accordance with the provisions of Chapter III of the Code.

8.2 They thus vehemently submit that in the present case, liquidation process had not been resorted to and it is not a case of winding up of the existing company and therefore, Rule 22 of the Rules has no application in the present matter and placed reliance in support of their stance on the proposition of law as laid down in the case of *Ultratech Nathdwara Cement Ltd. v. Commissioner of Cus., Jamnagar (Prev.)*[6] .

9. The Ld. Authorized Representative Shri S.S. Chattopadhyay, assisted by the Ld. Authorized Representative Shri S. Mukhopadhyay, however, strongly contests passing of any direction from the Tribunal on the aspect of refund of pre-deposit and submits that it is the settled law under the given circumstances, that the appeal stands abated and the Tribunal would thus not be in a position to give any directions in the matter, having become *functus officio.*

10. We have heard the two sides and carefully considered the extensive pleadings and arguments made before us.

11. The only question required to be dwelt upon is the fate of the present appeals under the given circumstances and if the same abate, any further course of action / direction to be issued with regard to deposits made by the erstwhile appellants under Section 35F of the Central Excise Act, 1944[7].

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6 - FO No. A/11268/2022 dated 20.10.2011 in C/45/2012 – CESTAT, Ahmd.
7 - The Act.

12. For ready appreciation of the legal aspects involved, Rule 22 and Rule 41 of the Rules are enumerated hereunder:-

- **Rule 22:**

  "***Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application.***

  *— Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be :*

  *Provided that every such application shall be made within a period of sixty days of the occurrence of the event :*

  *Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit."*

- **Rule 41:**

  "***Orders and directions in certain cases. —*** *The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice."*

12.1 Thus, in the context of Rule 22 of The Rules, it would be relevant to examine the concepts of: -

(1) A company being wound up or under liquidation.

(2) The effect of an appeal abating and

(3) In terms of Rule 41 of the Rules, the scope and extent of the inherent powers as vested in the Tribunal narrowed down to giving effect to its orders or to secure the ends of justice or prevent the abuse of the process, etc.,

before venturing into the ratios of the judgements as cited above and other decisions relevant to the subject matter.

12.2 It is therefore necessary to see whether the fine technical difference attempted to be made out by the Ld. Senior Advocate between 'liquidation' and 'winding up' has any bearing to the effect of abatement of the present appeals and whether in each of the two scenarios, the appeals need to be treated distinctly or would simply abate as stated under Rule 22 of The Rules.

13. **Black's Law Dictionary** (Seventh Edition) defines "abatement" as under: -

> *"**abatement** (ə-bayt-mənt), n. **1.** The act of eliminating or nullifying <abatement of a nuisance> <abatement of a writ>. **2.** The suspension or defeat of a pending action for a reason unrelated to the merits of the claim <the defendant sought abatement of the suit because of misnomer>. See plea in abatement under PLEA.*
>
> > *"Although the term 'abatement' is sometimes used loosely as a substitute for 'stay of proceedings, the two may be distinguished on several grounds. For example, when grounds for abatement of an action exist, the abatement of the action is a matter of right, but a stay is granted in the court's discretion. And in proper circumstances a court*

> *may stay a proceeding pending the outcome of another proceeding although a strict plea in abatement could not be sustained." 1 Am. Jur. 2d Abatement, Survival, and Revival § 3 (1994).”*
>
> ***3**. The act of lessening or moderating; diminution in amount or degree <abatement of the debt. 4. The reduction of a legacy, general or specific, as a result of the estate's being insufficient to pay all debts and legacies <the abatement of legacies resulted from the estate's insolvency>. 5. Archaic. The act of thrusting oneself tortiously into real estate after the owner dies and before the legal heir enters <abatement of freehold >. Also termed (in sense 5) abatamentum. abate, vb. abata- ble, adj.”*

As evident from (1) and (2) above, It is quite clear that the effect of an appeal abating would result in eliminating or nullifying the appeal for a reason unrelated to the merits of the claim/issues raised and agitated in the appeal.

13.1 Viewed in this context, the appeals filed by the appellants herein are said to abate i.e., cease to exist, having been rendered infructuous in the light of the provisions of the Code and the approved Resolution Plan in terms of the provisions of the said Code. What is relevant is the point in time when the appeal ceases to be effectively operative. Thus, in terms of Section 14(1) of the Code which reads as under:

> *“14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —*
>
> > *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
> >
> > *(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

> *(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
>
> *(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."*

no sooner an order under Section 14(1)(a) is issued, effectively seeking recourse to alternate remedies is halted till the completion of the CIRP. Once the Resolution Plan succeeds and is approved in terms of Section 31 of the Code (reproduced below):

> *"31. (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, guarantors and other stakeholders involved in the resolution plan.*
>
> *(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*
>
> *(3) After the order of approval under sub-section (1),—*
>
> > *(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*
> >
> > *(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database."*

the effect of this is its binding nature and the vacation of the moratorium order. In effect, it may not be incorrect to state that once the CIRP process is set out

in terms of Sections 7 to 10 of the Code, all pending disputes are given a go-by and what occupies the centre stage is the moratorium declaration and its public announcement.

13.2 Further, the moment the Resolution Plan is approved in terms of Section 31 of the Code or a moratorium is issued in terms of Section 14 of the Code, the said provisions of the code become applicable statutorily.

13.3 Rule 22 of The Rules is very categorical to this extent. It formalises the pronouncement of the fact of abatement of the appeal, pending before the Tribunal. The said Rule clearly states, that the effect of abating actually emanates out of the process of a company being wound up/liquidated, but for an application made for continuance of such proceedings. It would also be imperative to understand the fine difference, if any, between the cases of 'winding up' and 'liquidation'. Thus, as viewed and evident from a bare reading of the legal provisions in the context of Rule 22 of the said Rules – the two terms have been used rather loosely, though resulting in the same implied consequence. The heading of Rule 22 is concerned with the continuation of the appeal proceedings after being adjudged insolvent. Impliedly, the switch-over of the defaulting company by following the statutory process laid out in the Code is nothing more but a case of insolvency of the erstwhile appellant-company and hence winding up of the earlier organization. Moreover, a careful reading of Rule 22 of The Rules categorically states, *"where in any proceedings the appellant … … is adjudicated as an insolvent …".* Thus, to hair-split the argument that Rule 22 cannot be applied to the fact of the case as it deals with winding

up of the company is not essentially made out. There is thus no doubt that the present proceedings clearly lie within the ambit of Rule 22 *ibid.*

14. Reference may also be made to what is so enunciated with reference to these two terms viz. 'liquidate' and 'winding up' in the Black's Law Dictionary. The same are thus reproduced hereunder:

> *"**liquidate,** vb. 1. To determine by litigation or agreement the amount of (damages or indebtedness). 2. To settle (an obligation) by payment or other adjustment. 3. To ascertain the liabilities and distribute the assets of (an entity), esp. in bankruptcy or dissolution. 4. To convert (a nonliquid asset) into cash. 5. To liquidate something, such as a debt or corporation. 6. Slang. To get rid of (a person), esp. by killing"*
>
> *"**winding up**, n. The process of settling accounts and liquidating assets in anticipation of a partnership's or a corporation's dissolution. Cf. DISSOLUTION (3). wind up, vb. wind up, n."*

14.1 As is clear from the aforesaid expressions, 'winding up' is the process of settling of accounts and liquidating assets in anticipation of the dissolution of a corporation whereas 'liquidation' can be construed as the process of ascertaining the liabilities and distribution of the assets particularly in bankruptcy or dissolution. In other words, liquidation is largely a process of winding up.

15. Justice R.P. Sethi's treatise, **Supreme Court on Words & Phrases** (1950-2021) (Third Edition) further refers to abatement, as under: -

> *"**Abate.** "Abating" means an extinguishments of the very right of action itself. The right of prosecution is effectually wiped out. To "abate", as applied to an action, is to cease, terminate, or come to an end prematurely. P.K. Mitra v. State of W.B. AIR 1959 SC 144. (See also Chandu Naik v. Sitaram B. Naik. AIR 1978 SC 333: (1978) 1 SCC 210; Lakshmi Shankar Srivastava v. State. AIR 1979 SC 451: (1979) 1 SCC 229)."*

15.1 It therefore naturally flows that, abatement is commonly understood as extinguishing the right of action itself. It further categorizes to state, that the right of prosecution is effectually wiped out and that would equally apply to an action to cease, terminate or come to an end prematurely. Moreover, the effect of the various clauses of the Resolution Plan as referred to in paragraph 4.1 (*supra*), is to wipe-out and extinguish all *sub-judice* claims in the matter.

16. Furthermore, **Stroud's Judicial Dictionary of Words and Phrases** (Seventh Edition) Volume-3 P-Z, defines the terms "liquidation" and "winding up" as under:

> *"**LIQUIDATION.** Voluntary liquidation of a company, though merely for the purpose of reconstruction, is none the less a "liquidation" within a clause of forfeiture in a lease to the company (Horsey v Steiger [1898] 2 Q.B. 259). But voluntary liquidation is equivalent to "bankruptcy", as that latter word was used in Conveyancing and Law of Property Act 1881 (c.41), s.14(6, i), and Conveyancing and Law of Property Act 1892 (c.13), s.2(2); therefore, in cases provided for by the latter section, notice would have to be given under the first section (same case [1899] 2 Q.B. 79). See further Watney v Ewart, 18 TLR. 426, in House of Lords sub nom. Fryer v Ewart [1902] A.C. 187-see the Law of Property Act 1925 (c.20), s.205.*
>
> *Forfeiture on "liquidation" is worked immediately on the making of a winding-up order (General Share Co v Wetley Co, 20 Ch. D. 260)."*
>
> *"**WINDING-UP.** The winding-up of the affairs of a company, registered under the Companies Acts, is of three kinds-*
>
> *(a) Compulsory, or by the court: see hereon Companies Act 1985 (c.6), ss.512-571.*
>
> *(b) Voluntary: see hereon Companies Act 1985 (c.6), ss.572-605; Buckl. 345-365; see Re National Company for Distribution of Electricity [1902] 2 Ch. 34. A compulsory winding-up changes the personality of a company, secus, of a voluntary winding-up (Midland Counties District Bank v Attwood [1905] 1 Ch. 357, rejecting Re Imperial Wine Co, Shirreff's Case, L.R. 14 Eq.*

*417, and discussing Reid v Explosives Co 19 Q.B.D. 264). See further Reigate v Union Manufacturing Co 87 L.J.K.B. 724; Re Havana, etc. Co [1916] 1 Ch.8.*

*(c) Subject to supervision of the court: see hereon Companies Act 1985 (c.6), ss.606-610.*

*As to the construction of surplus assets clause, in a winding-up; see Birch v Cropper 14 App. Cas. 525; Ex p. Maude 6 Ch. 51; Re Anglo-Continental Co [1898] 1 Ch. 327; Re New Transvaal Co [1896] 2 Ch. 751, cited SURPLUS. See Re Ramel Syndicate [1911] 1 Ch. 749.*

*"Winding-up" (s.32(4), Building Societies Act 1874 (c.42)) meant winding-up under the Companies Acts 1862, 1867 (Re Sunderland Building Society 21 Q.B.D. 349) or the Companies Winding-up Act 1890 (Building Societies Act 1894 (c.47), 5.8).*

*A winding-up may be ordered against a building society whose registry has been cancelled under s.6 of the Building Societies Act 1894 (c.47) (Re Grosvenor House Property Acquisition, etc. Society 71 L.J. Ch. 748). See further Re Ilfracombe Building Society 70 L.J. Ch. 72, cited FORMED.*

*So, in a bank charter, though granted before the Companies Act 1862, "winding-up the affairs of the corporation" included a winding-up under the statutory powers for the time being in force, i.e. under the Companies Act, 1862, and the Acts amending the same (Re Oriental Bank 54 L.J. Ch. 481). "Winding-up of any partnership" (County Courts Act 1888 (c.43), s.67(7)). There might have been an action or application for the winding-up of a partnership notwithstanding that the alleged partnership was disputed by the defendants (R. v Judge Lailey, Ex p. Koffman [1932] 1 K.B. 568; affirmed ibid., 577).*

*"In the course of winding-up" (Companies Act 1948 (c.38), s.276(1) (see now Companies Act 1985 (c.6), s.570)) is not confined to matters arising after a winding-up order has been made, but refers to all matters arising after the presentation of the petition (Re Dynamics Corp of America [1973] 1 W.L.R. 63).*

*"Beneficial winding-up": see BENEFICIAL.*

*See LIQUIDATION; ORDERED; SUPERSEDE."*

17. It is therefore evident from the aforesaid definitions that abatement in the present context implies the termination or extinction of the subject under consideration. Hence, its impact with reference to the appeals herein, would be as if there were no pending appeals in the first place. To this extent, the law is categorical as regards the understanding and interpretation of the term "abatement". In contrast to this, the assessee has referred to, by virtue of procedural variations, a distinction between 'winding up' and 'liquidation', which to our mind would not be relevant for the limited understanding of the issue in these appeals. In effect, "winding up" is a reference to the closing down of business operations of a corporate, whereby the assets are sold off, creditors paid and the remaining assets distributed amongst the owners. On the other hand, "liquidation" is essentially an accounting process by way of which the commercial operations and the existence of the corporate / company concerned are brought to an end. The assets and properties of business are redistributed amongst the various stakeholders.

17.1 In fact *Wikipedia* (www.wikipedia.org) notes that when a firm is liquidated, it at times is also referred to as 'wound up' or 'dissolved'. Notably, thus there may not be a major difference in substance between the two terms and winding up can be said to involve liquidation or dissolution of the company (ending of all business affairs and closure of the company). Liquidation is largely about selling of the assets of the company to pay the creditors and closing down the company.

17.2 Thus what has essentially transpired in the present appeals is the closure of business operations

of the erstwhile appellant viz. BSL and its acquisition and to accord it a fresh lease of life as per the terms of the Resolution Plan (including warding off all accrued debts and liabilities of the erstwhile organization) under a whiff of fresh air under a new corporate entity (M/s. Tata Steel Limited, in the present case).

18. It may be pertinent to note that the heading under Chapter II of the Code, whereby the said Resolution Plan has been approved by the NCLT/NCLAT, seeks to state the "Corporate Insolvency Resolution Process" under Part II of the Code, which reads as:-

*"PART II*

*INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS"*

19. While the terms 'liquidation' and 'winding up' may not be defined under the Code, however, in view of what is stated supra, the natural meanings have to be assigned to the said terms, in the context so used in Rule 22 of The Rules and from the readings of the definition under Section 5(18) of the Code pertaining to "liquidator". What is clear therefrom is that the term 'liquidation' can safely be construed to be as is used in the context of 'insolvency' and that is why both Chapter II (Corporate Insolvency Resolution Process) and Chapter III (Liquidation Process) fall within Part II of the Code.

19.1 Simply put, 'winding up' involves ending of all business affairs and includes the closure of the corporate entity. 'Liquidation', on the other hand, as

stated earlier, is largely concerned with the sale of assets of the corporate entity to pay up the creditors and then result in closure of the company. Section 271 of the Companies Act, 2013 lays down the circumstances that lead to winding up of a company. However, the "Insolvency Resolution Process", as the name itself suggests, is a mechanism pertaining to re-organization and insolvency resolution of the corporate entity or others to which the statutory provisions would apply, carried out with specific objectives in mind like maximisation of the assets under liquidation, balancing the interests of stakeholders, promoting entrepreneurship amongst others.

19.2 For all practical and legal purposes, the original corporate debtor (BSL) is wound up and ceases to exist from the date of the NCLT order. No statutory returns are being filed, no listing on other statutory boards like stock exchange, banks or other governmental organizations with legal recognition like labour, environment, etc., remains thereafter i.e., with effect from the date of adjudication and passing of the Order under Section 31 of the Code.

- **Scope of the inherent powers contemplated under Rule 41 of the Rules.**

20. The appellant in support of their stance, concerning powers vested in the Tribunal under Rule 41 of The Rules, have essentially referred to the law as set out by the Hon'ble Apex Court in the case of *J.K. Synthetics Ltd. v. Collector of Central Excise*[8] and

8 - (1996) 6 SCC 92

that in the case of *State of Gujarat v. Essar Steel Ltd.*[9] While none of the two cases were concerned with a kind of situation as in the present appeals, in *J.K. Synthetics Ltd.*[8] case the Hon'ble Apex Court dwelt with a matter of recall of an *ex-parte* order where the counsel for the appellant could not appear before the then CEGAT (now CESTAT) for reasons beyond his control. In the case of *Essar Steel Ltd.*[9], the Hon'ble Gujarat High Court, in the context of the Gujarat Sales Tax Act, 1969 / Gujarat Value Added Tax Act, 2003, did nowhere examine the scope and reach of Rule 41 of the Rules. The Hon'ble High Court was concerned with several issues therein like refund of amount deposited by way of pre-deposit once the Tribunal allowed the appeals and decided the same in favour of the depositor of the said money. We are afraid the situation in the present matters is not akin to either of the two cases, hence the ratio of the said laws is not blindly adoptable. In the present case as the appeals simply get abated, the Tribunal does not have an opportunity to examine the merits of the case, least of all arbitrate and render a ruling on the subject issues. Likewise, there is also no question of any *ex-parte* ruling having been rendered in the matter.

20.1 Amongst others, the Ld. Senior Advocate referred to the decision in the case of *State of Gujarat v. Essar Steel Ltd. (supra)* for the proposition that the powers vested in the Tribunal under Rule 41 of the Rules were of a wide amplitude and by necessary implication, Tribunal is vested with all powers and duties incidental and necessary to make the exercise of those powers fully effective. However, in the said case, the relevant question was being examined in the

9 - 2016 SCC OnLine Guj 4125

context of stay petitions where *ex-parte* orders were under consideration before the Tribunal. Insofar as the case of *Essar Steel Ltd*. is concerned, it may be pointed out that it was categorically held therein that the petitioner had no legal authority to hold on to the amount of pre-deposit made in view of the respondent-company having succeeded the appeals whereby the Tribunal held that there was no liability to pay tax (ref. paragraph 21). The question thus arises is whether "abatement" can be considered as "succeeding the appeal" and the firm answer thereto is a resounding negative. Thus, we feel that no support can be derived by the appellant in support of their stance from the aforesaid case.

20.2 Similar has been the ratio of law laid down in the case of *J.K. Synthetics Ltd. v. Collector of Central Excise*[8] *(Civil Appeal No. 3049 of 1988) (supra).* It was pointed out therein that the Tribunal, under Rule 41, was clothed with the powers to secure the ends of justice with respect to its orders. It was pointed out that the CEGAT had powers to set aside *ex-parte* orders for the reasons as contained in the said order. The legal aspects for consideration in the present matter are nowhere akin.

- **A Note on 'functus officio'**

21. Narotam Desai's "**A Manual of Legal Maxims, Words, Phrases & c.**" (Fourth Edition) by P.M. Bakshi, Adarsh B. Dial, in the context of *functus officio*, reads as under: -`

> *"**Functus officio**. Having discharged a duty; one whose duty has ceased; one who having discharged his duty has terminated his authority or appointment. Plural, functi officio*

*A person who has discharged his duty, or whose office or authority is at an and. Wharton's Concise Law Dictionary.*

*As soon as an award has been made and filed in court, the powers of the arbitrators come to an end; they become functus officio, and it is not open to a dissentient arbitrator to come in, afterwards, and sign the award. Ramesh Chandra v Ka- runamoyi, 33 Cal 498.*

*As soon as a criminal case is decided, and the accused convicted and sentenced, the court is functus officio, and has no power to suspend the operation of his sentence and to release him on bail, on his asserting his intention to appeal. Diwan Chand v The King-Emperor, Punj WR, No. 19 of 1908, Cr.; Punj. Rec., No. 15 of 1908, Cr.; 8 Crim. LJ 89.*

*Under ss. 51, 78 of the Probate and Ad- ministration Act a Court does not become functus officio immediately a surety is accepted. In case the court discharges the surety before the administration is over, it can call for a fresh surety. Raj Narain v Fulkumari, 6 Cal WN 7; 29 Cal 68.*

*Where a receiver is appointed pending an appeal, he does not become functus officio, i.e., his office does not come to an end as soon as the appeal is decided and remanded, but continues till he is finally discharged. Grey v Woogra Mohun, 28 Cal 790.*

*Where a judge has made an order for a stay of execution which has been passed and entered, he is functus officio, and neither the nor any other judge of equal jurisdiction has jurisdiction to vary the terms of such stay. R. v GM. Holdings Ltd., (1941) 3 All ER 417. An arbitrator or umpire who has made his award is functus officio, and cannot in common law alter it in any way whatsoever. See Mordue v Palmer 6 Ch App. 22. Brooke v Mitchell, 6 NC 349, The High Court has no power to issue a writ of certiorari for quashing the order of a Tribunal which has become extinct and the record of the proceedings, in which the impugned or- der was passed, was lodged outside the territorial jurisdiction of the High Court. But where the order of the Tribunal is absolutely null and void, it could be ignored and the authority who intended to enforce the order could be restrained by the High Court by appropriate direction from enforcing the said order if he were resident within the territorial jurisdiction of the High Court. Punjab Sugar Mills v State of U.P., AIR 1960 All 444; E. Sefton And Co., Mirzapur v Textile Mill Mazdoor Union, AIR 1958 All 80.*

*A question raised before the M.P. High Court in a reference under the Stamp Act, as to whether after registration of a document, the registering authority could hold an inquiry into the value of the property, and ask the*

*executant to pay the deficit stamp duty. The court held that after the registration of the document, the registering authority had no power to hold an inquiry into the value of the property, and call upon the executant to pay the deficit stamp duty. Once the registering authority had registered the document it had completed the performance of its functions under the Registration Act, and had become functus officio, and thereafter it had no power under section 33 of the Stamp Act to impound the instrument. Komal Chand v State of M.P., AIR 1966 MP 20 (FB).*

*Sugar manufacturers filed writ petition in the High Court challenging the price fixed by the Central Government. The High Court passed interim orders by virtue of which the manufacturers could realise prices higher than the controlled price. Later on, they withdrew the writ petitions, and the government filed miscellaneous applications for direction that the sugar manufacturers should be directed to pay back the excess price re-covered by them under the interim orders. It was argued that the applications were not maintainable because after decision of the writ petitions the High Court had become functus officio. The court rejected this contention. It was held that every court becomes functus officio after it decides a case, except for the purpose of reviewing its decision where it is moved for review. To say that the court becomes functus officio only means that the court cannot reopen the same controversy and cannot redecide the matter. The doctrine of functus officio does not go to the extent of saying that if by virtue of an interim order a wrong has been done to a person or to the society, it cannot be un- done after the dispute between the parties has ended otherwise than on merits. By pleading that the court had become functus officio, no one can over-reach the court. Union of India v Sahkari Khand Udyog Mandli Ltd., AIR 1981 Guj 102.*

*Once decree is made, the learned Judge be- comes functus officio. The dictionary meanings of functus officio are as under:*

*As per Black's Law Dictionary, 2009, 9th Edition, p. No. 743:*

> *"Having performed his/office, an officer or official body without further authority or legal competence because the duties and functions of the original commission have been fully accomplished."*

*As per Wharton's Law Lexicon, 1953, 14th Edition, p. No. 441:*

> *"A person who has discharged his duty, or whose office or authority is at an end."*

*As per Stroud's Judicial Dictionary, 1986, 5th edn., Vol. 2, p. No. 1064:*

> *"Where a Judge has made an order for a stay of execution which has been passed and entered, he is functus officio and neither he nor any other Judge of equal jurisdiction has jurisdiction to vary the terms of such stay. (Re: V.G.M. Holdings Limited, (1941) 3 All E.R. 417)" M.C. Bachappa v Nagarath-namma, 2018 (2) KCCR 1017: 2018 (2) Kar LJ 150 (Karn).*
>
> ***"24. The learned Counsel for the Revenue contended that the normal principle of law is that once a judgment is pronounced or an order is made, a Court, Tribunal or Adjudicating Authority be- comes functus officio (ceases to have control over the matter). Such judgment or order is "final" and cannot be altered, changed, varied or modified. It was also submitted that the Income Tax Tribunal is a Tribunal constituted under the Act. It is not a "Court" having plenary powers, but a statutory Tribunal functioning under the Act of 1961. It, therefore, cannot act out- side or dehors the Act nor can exercise powers not expressly and specifically conferred by law. It is well-settled that the power of review is not an inherent power. The right to seek review of an or- der is neither natural nor fundamental right of an aggrieved party. Such power must be conferred by law. If there is no power of review, the order cannot be re- viewed." (Assistant Commissioner, In- come Tax, Rajkot v Saurashtra Kutch Stock Exchange Limited, AIR 2008 SCW 7153: 2008 (14) SCC 171)***
>
> *"26. It is true that once an Authority exercising quasi-judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review.* ***But the question is as to at what stage an authority becomes functus officio in regard to an order made by him.*** *P. Ramanatha Aiyer's Advanced Law Lexicon (3rd Edn., Vol. 2 pp. 1946- 47) gives the following illustrative definition of the term 'functus officio':*
>
> *'Thus a Judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision."*
>
> *.....*

*28. We may first refer to the position with reference to Civil Courts. Order 20 of the Code of Civil Procedure deals with judgment and decree. Rule 1 explains when a judgment is pronounced. Sub-rule (1) provides that the Court, after the case has been heard, shall pronounce judgment in an open Court either at once, or as soon thereafter as may be practicable, and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders. Sub-rule (3) provides that the judgment may be pronounced by dictation in an open Court to a shorthand writer [if the Judge is specially empowered (sic by the High Court) in this be-half]. The proviso thereto provides that where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such corrections as may be necessary, be signed by the Judge, bear the date on which it was pronounced and form a part of the record. Rule 3 provides that the judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to save as provided by Section 152 or on review. Thus, where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open Court, that itself amounts to pronouncement. But even after such pronouncement by open Court dictation, the Judge can make corrections before signing and dating the judgment. Therefore, a Judge becomes functus officio when he pronounces, signs and dates the judgment (subject to Section 152 and power of review). The position is different with reference to quasi-judicial authorities. While some quasi-judicial Tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi-judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi- judicial authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the Authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the Authority will become functus officio. The order dated 18-1-*

*1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the Appointing Authority became functus officio when he signed the note dated 18-1-1995." (State Bank of India v S.N. Goyal, AIR 2008 SC 2594: 2008 (8) SCC 92.)*

*"38. Taking any view of the matter, therefore, we must hold that the High Court committed manifest error in dis- missing the writ petitions filed by the appellant-auction purchaser challenging the decision of the Deputy Registrar (CS) dated 18-7-2009. The High Court ought to have allowed the writ petition as the Deputy Registrar had no jurisdiction to entertain appeal against the order of confirmation of sale issued under Section 89- A of the Act read with Rule 38 of the Rules; and also because, admittedly, the debtor failed to pay the awarded amount inspite of repeated opportunities given to him from time to time. Moreover, the debtor cannot succeed in the writ petition filed by the auction purchaser and the Bank against the decision of the Deputy Registrar and get higher or further relief in such proceedings. Thus, the Division Bench having finally disposed of the writ appeal ought not to have entertained the application preferred by the debtor in the guise of clarification and to pass any or- der thereon which would enure to the benefit of debtor who is in default, having become functus officio." P.M. Abubakar v State of Karnataka, AIR 2016 SC 5602: 2017 (1) SCC 302 as quoted in M.C. Bachappa v Nagarathnamma, 2018 (2) KCCR 1017: 2018 (2) Kar LJ 150 (Karn).*

*The order was passed by the District Forum by invoking its jurisdiction under Section 27 of the Consumer Protection Act, 1986 and the same had attained finality. Neither has any new order been passed, nor could any order have been passed under Section 72(1) of the Act, 2019 or under Section 27 of the Act, 1986, as the case may be. The District Forum having rightly held that it has become 'functus officio', has dismissed the application moved by the respondent No.4/Developer filed under section 151 CPC, as being not maintainable. Thus, the purported appeal preferred by the respondent No.4/ Developer against the said order before the State Commission was held to be not maintainable since the State Commission lacked the inherent jurisdiction to entertain the same. V.V.L. Sujatha v State of Telangana, 2021 (4) ALT 51: 2021 (4) Andh LD 280 (Tel) (DB).”*

(Emphasis supplied)

21.1 Thus, it implies the cessation of the authority to act upon having discharged a duty, statutory function or the like. As pointed out in the aforesaid commentary, no sooner an award is made and filed in court, the powers of arbitration come to an end i.e., the authority pronouncing the order become *functus officio.* Thus, accordingly, the process of judicial analysis and issuance of order (loosely worded as 'to arbitrate') is off the shelf once the Resolution Plan is approved in terms of Section 31 of the Code.

22. The aforesaid definitions, analyses and rulings, expressions as conveyed and explained by way of various examples concerning criminal processes, arbitration award, order of probate or such other orders made, including that for execution of a stay, or any other legal pronouncement by a judicial authority once it is finally dealt with, only lead to the inevitable conclusion of the authority being debarred from acting upon in the matter.

23. It may therefore be concluded that in such scenarios, exercise of any powers not expressly conferred by law ceases to exist. The judicial authority is divested acting *de hors* the powers not expressly vested. There is therefore no doubt that the Tribunal is automatically rendered functus officio upon the characterization of an appeal as "abates" based on the outcome of the proceedings initiated by the NCLT / NCLAT and the approval accorded in terms of the prescriptions laid down under the Code.

24. We may state that we, in effect, in terms of Rule 22 of the CESTAT (Procedure) Rules, have been rendered *functus officio* in the matter and the present

order in the proceedings is merely in the process of conveying the directive of formalized abatement.

25. We now would dwell upon the pronouncements of various judicial fora, relevant or relied upon in support of the arguments made and the issue involved in these appeals.

- **Case Law Analysis**

**26. Jet Airways (India) Ltd. v. Commissioner of Service Tax, Mumbai-I[10]**

26.1 In the impugned case, the Resolution Plan was approved by the NCLT vide Order dated 22.06.2021 pursuant to an application filed by one of the financial creditors in terms of Section 7 of the Code and the appellant therein pleaded for non-invocation of Rule 22 of the Rules. The Tribunal had very categorically asserted that:

> *"…the moment the successor interest with sufficient rights to be represented is appointed by the NCLT this rule will become applicable and it is for the successor interest to make an application for continuance of the proceedings. In the present case no such application has been filed by the successor interest for the continuance of the proceedings …"*

26.2 The Tribunal in the said case thus held that as no such application having been filed by the successor-in-interest, the impugned appeal gets abated. It further referred to the decision of the Hon'ble Apex Court in the case of *Committee of*

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10 - Service Tax Appeal No. 86962 of 2014 & ors. – Final Order Nos. A/86026-86036/2022 dated 19.07.2022 – CESTAT, Mumbai

*Creditors of Essar Steel Ltd. v. Satish Kumar Gupta & ors.*[11] wherein the Hon'ble Apex Court had held as follows:

> *"103. ……..It is made clear that the CIRP of the corporate debtor in this case will take place in accordance with the resolution plan of Arcelor Mittal dated 23.10.2018, as amended and accepted by the Committee of Creditors on 27.03.2019, as it has provided for amounts to be paid to different classes of creditors by following Section 30(2) and Regulation 38 of the Code."*

26.3 Furthermore, it also referred to paragraph 102 of the decision of the Hon'ble Apex Court in the case of *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company*[12] wherein, the Hon'ble Supreme Court held as under:

> *"102. 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;***
>
> *(i) 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 I&B Code has come into effect;*
>
> *(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."*
>
> (Emphasis supplied)

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11 - (2020) 8 SCC 531 (S.C.)
12 - (2021) 9 SCC 657 (S.C.)

26.3.1 In view of the specific observations of the Hon'ble Apex Court in the case of *Ghanashyam Mishra & Sons Pvt. Ltd.*[12] reproduced above, little room remains for a subordinate authority, much less this Tribunal, which indeed is a creature of the statute, to digress and distinguish the specific objectives of the court.

26.4 The said decision of the Tribunal further noted that the C.B.I.C. had also issued SOP laying down guidelines for NCLT cases vide Instruction No. 1083/04/2022-CX9 dated 23.05.2022 on the aspect of claim for refund of pre-deposit and quoted the following paragraphs from the said decision of the Tribunal:

> *"4.7 CBIC has vide Instruction No.1083/04/2022-CX9 dated 23.05.2022 has laid down the guidelines (SOP) for NCLT cases. The said instructions at para-1 and 2 records as follows –*
>
> > *"Subject: Standard Operating Procedure (SOP) for NCLT cases in respect of the Insolvency and bankruptcy Code (IBC) - reg I am directed to inform the Insolvency and Bankruptcy Board of India has requested that role of GST and Customs authorities in certain key issues under the Insolvency and bankruptcy Code, 2016 needs to be formulated. Further, GST and Customs Authorities have been classified as operational creditors and are required to submit their claims against corporate debtors when the Corporate insolvency and resolution process is initiated and public announcement inviting claims is made by the insolvency professional.*
> >
> > *2. A timeline of 90 days from the insolvency commencement date is available for filing of claims. However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan is approved. It is also observed that the authorities then litigate on the rejection of each claims, despite the settled position that* ***no claims can be raised once the plan is approved and no demands can be raised on the Resolution Application who has taken over the company through such a resolution plan.****"*
>
> (Emphasis supplied)

26.5 On the specific question of claim of refund of pre-deposit by the appellant, the Tribunal in the said case, after taking due note of the Hon'ble Apex Court's pronouncements in the case of *Ruchi Soya Industries Ltd. v. Union of India*[13], clearly noted that this Tribunal had been rendered *functus officio* in the matter. The relevant part of the Tribunal's decision is reproduced verbatim hereunder:

> *"4.7 Applicant has claimed refund of pre-deposit as per judgement of Hon'ble Supreme Court in case of Ruchi Soya [2022 (380) ELT 8 (SC)] holding as follows:*
>
> > *"14. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent No. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the Learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.*
> >
> > *15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."*
>
> ***4.8 However from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal.***
>
> *5.1 Taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the corporate debtor, we are of the view that the appeals before this Tribunal are abated."*
>
> (Emphasis supplied)

13 - 2022 (380) E.L.T. 8 (S.C.)

**27. Jet Airways (India) Limited v. Commissioner of Service Tax-V, Mumbai & anor.[14]**

27.1 This is yet another case decided by the Tribunal in the case of the said assessee only (as at paragraph 26 above) vide Service Tax Appeal No. 86949 of 2015. Here again, demand of pre-deposit was one of the questions involved, the appeal having abated and the same having been answered by the co-ordinate Bench of this Tribunal in the following manner:

> *"6. Appellant-assessee has also claimed that the refund of pre-deposit to be paid to them at the time of filing the captioned appeal. In this regard, we find that the matter has already been decided by the Hon'ble Supreme Court in the case of Ruchi Soya [2022 (380) ELT 8 (SC)]. The relevant paras of the judgement is extracted as follows:*
>
> > *"14. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent No. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the Learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.*
> >
> > *15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."*

14 - Service Tax Appeal No. 86949 of 2015 – Final Order No. A/85896-85897/2023 dated 12.05.2023 – CESTAT, Mumbai

*7. However from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal.*

*8.1. In view of the order passed by the Co-ordinate Bench of this Tribunal vide Final Order No. A/86026-86036/2022 dated 19.07.2022 and on the basis of the judgement of the Hon'ble Supreme Court in Ghanashyam Mishra (supra) and upon taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the corporate debtor of the appellant-assessee company, we are of the view that the appeals before this Tribunal are abated."*

27.2 It be noted that even in this case, no orders were passed by the Tribunal on the subject question of refund of pre-deposit, taking due note of relevant case laws and the settled position in law.

**28. V3 Engineers Pvt. Ltd. v. Commissioner of Central Tax, Bengaluru North West[15]**

28.1 In the instant case too, the NCLT had vide its Order dated 21.09.2020 in terms of the powers vested under Section 31(1) of the Code, approved the Resolution Plan. It was *inter alia* pleaded that the order of the NCLT was binding on the Corporate Debtor, its employees, members and creditors including the Central Government, State Government and local authority to whom a debt in respect of payment of dues arises under any law for the time being in force as also other stakeholders involved in the Resolution Plan.

15 - Excise Appeal No. 3610 of 2012 and Excise Miscellaneous Application No. 20465 of 2021 & ors. – Final Order Nos. 21318-21324/2023 dated 30.11.2023 – CESTAT, Bangalore

28.2 Relying extensively on settled case-laws on the subject, the Tribunal was of the view that as consistently held by it, the appeal under such circumstances – once the CIRP is initiated and IRP appointed and/or Resolution Plan approved – the appeal would require to be abated. While arriving at its findings, the Tribunal referred to a catena of decisions on the subject, clearly holding that it being a creature of the statute, was therefore bound by the statutory provisions and possessed no jurisdiction to travel beyond the express powers vested in it under the statute, while deciding the appeals filed before it against the orders passed by various appropriate authorities. The Tribunal therefore was of the view that any order passed by the Tribunal beyond the powers vested in it would be *non-est* in law. In arriving at its findings about the issue of applicability of Rule 22 of the CESTAT (Procedure) Rules, 1982 with effect from the date of approval of the Resolution Plan by the NCLT, it referred to a series of authoritative pronouncements and decisions on the subject matter, including the following:

- ***Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd.***[16]
- ***UOI and others Vs. Ruchi Soya Industries Ltd.***[17]
- ***Ultra Tech Nathdwara Cement Ltd. Vs. Union of India***[18]
- ***MC Nally Sayaji Engineering Limited Vs. CCGST, Bolpur***[19]
- ***CCE & ST, Surat-II Vs. Arcelor Mittal Nippon Steel India Ltd.***[20]

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16 - 2021 (4) TMI 613 – SC
17 - 2022 (380) ELT 8 (SC).
18 - 2020. (37) G.S.T.L. 289 (Raj.)
19 - 2023 (4) TMI 1076 - CESTAT, KOLKATA
20 - 2023 (2) TMI 231 - CESTAT, AHMEDABAD

- ***Jet Airways India Ltd Vs. CST, Mumbai-V***[21]
- ***Bhushan Power & Steel Ltd Vs. CCE, Kolkata-IV***[22]
- ***Alok Industries Ltd Vs. CCE, Belapur & Mumbai***[23]
- ***Murli Industries Ltd Vs. CCE, Nagpur***[24]

28.3 While referring to the decision of the Tribunal in the case of *Alok Industries Ltd.*[23] which analysed the position with regard to Rule 22 of The Rules, the Tribunal observed that the said Rule would be applicable the moment the successor-in-interest with sufficient rights is appointed by the NCLT to make an application for continuation of the proceedings. The relevant extract from the said decision in *Alok Industries Ltd.* case is quoted hereunder:

> *"4.4. …. Learned advocate has labored to explain why this rule should not be made applicable in his case. However, in view of the fact as stated in the para 4.2 and 4.3 above we are of the view that moment the successor interest with sufficient rights to be represented is appointed by the NCLT this rule will become applicable and it is for the successor interest to make an application for continuance of the proceedings. In the present case no such application has been filed by the successor interest for the continuance of the proceedings and hence the appeal stands abated by the operation of this rule.*
>
> *4.5. Resolution plan specifically has …*
>
> *……..*
>
> *4.6. There is no dispute to the binding nature of the resolution plan as approved by the NCLT. It has been settled by the Hon'ble Apex Court in the cases referred to by the learned counsel for the applicant. Relevant paras of the said decisions are reproduced below:*
>
> *a. In the case of Committee of Creditors of Essar Steel Ltd., vs. Satish Kumar Gupta & Ors (2020) 8*

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21 - 2023 (5) TMI 767 - CESTAT, MUMBAI
22 - 2023 (5) TMI 184 - CESTAT, KOLKATA
23 - 2022 (10) TMI 801 - CESTAT, MUMBAI
24 - 2022 (11) TMI 289 - CESTAT, MUMBAI

*SCC 531 Hon'ble Apex Court has also held as follows:*

> *"103. It is made clear that the CIRP of the corporate debtor in this case will take place in accordance with the resolution plan of Arcelo Mittal dated 23.10.2018, as amended and accepted by the Committee of Creditors on 27.03.2019, as it has provided for amounts to be paid to different classes of creditors by following Section 30(2) and Regulation 38 of the Code."*

*b. The Hon'ble Supreme Court in the case of Ghanashyam Mishra & Sons Pvt. Ltd. vs. Edelweiss ARC reported in (2021) 9 SCC 657 at para-102 of the judgement has V categorically held as follows -*

> *"102. 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;*
>
> *(i) 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 I&B Code has come into effect;*
>
> *(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."*

*4.7 CBIC has vide Instruction No. 1083/04/2022-CX9 dated 23.05.2022 has laid down the guidelines (SOP) for NCLT cases. …….*

*4.7 Applicant has claimed refund of pre-deposit as per judgement of Hon'ble Supreme Court in case of Ruchi Soya. [2022 (380) ELT 8 (SC).] holding as follows:*

*"14. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent No. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the Learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.*

*15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."*

*4.8. However, from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal. Further it is also settled that the impugned orders in the appeals have got merged in the order of the NCLT approving the Resolution Plan. The decision of the Hon'ble Bombay High Court referred to by the learned Authorized representative clearly lays down the test as in which condition the said doctrine shall apply in following manner.*

*--------*

*4.9. We are satisfied that the test laid down by the Hon'ble High Court is applicable in the present case for us to hold so.* ***It is quite interesting to note that applicant to the extent of demand made finds the order of NCLT binding and wants pronouncement in respect of the refund by this tribunal. Can we sit in judgement over the order of NCLT approving the resolution plan?*** *Further issue of refund is any case not the issue raised in appeal it is for the applicant to approach the relevant authorities in the matter.*

*----------*

*5.1. The appeals filed abate as per the Rule 22 of the CESTAT Procedure Rules, 1982, with effect from the date of the approval of the resolution plan by the NCLT.*

*5.2. Since the appeals have abated the miscellaneous application filed by the applicant/appellant does not survive."*

(Emphasis supplied)

**29. Ballarpur Industries Ltd. v. Commissioner of Central Excise & Service Tax, Panchkula[25]**

29.1 In the impugned case, the question with regard to non-inclusion and no provision having been made with regard to the said appeal in the Resolution Plan had come up for consideration. The Tribunal after going through the settled case-laws on the subject matter and in particular, referring to the judgement of the Hon'ble Apex Court in the case of *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors. (supra) dated 13.04.2021*, adopted the settled position of law as held by the Hon'ble Apex Court, reiterated by the Tribunal in the case of *Jet Airways (India) Ltd. (supra)* vide order dated 12.05.2023. It would be apt to quote the following paragraphs from the said decision of the Tribunal:

> *"6. After considering the submissions of both the parties and perusal of the Resolution Plan, we find that the identical matter has been considered by two coordinate benches of the Tribunal in the case of M/s Jet Airways (India) Limited vs. Commissioner of Service Tax-IV, by Mumbal Bench vide order dated 12.05.2023 and Icomm Tele Ltd. vs. Commissioner of Central Tax, Puducherry-GST by Hyderabad Bench. It is pertinent to refer the findings of the CESTAT, Mumbai Bench in the case of M/s Jet Airways (India) Limited which was disposed of vide its order dated 12.05.2023 in Appeal Nos. ST/86949, 87287/2015 and it was ordered that the appeals stand abated once the Resolution Plan has been approved by NCLT and the CESTAT has become functus officio in the matters relating to this appeal. It is pertinent to reproduce the relevant findings of the coordinate benches on the issue which are reproduced herein below:-*
>
> > *"4. We also find that the matter is no more res integra, as the Hon'ble Supreme Court in Civil Appeal No. 8129 of 2019, in the case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. &*

25 - [Service Tax Appeal No. 536 of 2010 – Final Order No. 60005/2024 dated 05.01.2024 – CESTAT, Chandigarh]

*Ors. vide judgement dated 13.04.2021, had decided the settled position of law, as under.-*

> *"2. The short but important questions, that arise for consideration in this batch of matters, are as under:-*
>
> *(i) 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 an adjudicating authority under sub- section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'I&B Code')?*
>
> *(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory / declaratory or substantive in nature?*
>
> *(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?*
>
> *.....*
>
> *CONCLUSION*
>
> *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 subsection (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, allsuch 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) 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 I&B Code has come into effect;*

*(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 the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."*

*5. We also find that CBIC has vide Instruction No. 1083/04/2022-CX9 dated 23.05.2022 has laid down the guidelines in the form of Standard Operating Procedure (SOP) for handling the NCLT cases by the department, and reiterated the legal position that as operational creditors, GST and Customs authorities are required to submit their claims against the corporate debtors when the corporate insolvency and resolution process has been initiated. Once the Resolution plan is approved by NCLT, no demands can be raised on the Resolution Applicant. The relevant paragraph of said instructions is extracted below:*

*……*

*6. Appellant-assessee has also claimed that the refund of pre-deposit to be paid to them at the time of filing the captioned appeal. In this regard, we find that the matter has already been decided by the Hon'ble Supreme Court in the case of Ruchi Soya [2022 (380) ELT 8 (SC)]. The relevant paras of the judgement is extracted as follows:*

*"14. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent No. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the Learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.*

*15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan,*

> *does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."*
>
> *7. However from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal.*
>
> *8.1 In view of the order passed by the Co-ordinate Bench of this Tribunal vide Final Order No. A/86026-86036/2022 dated 19.07.2022 and on the basis of the judgement of the Hon'ble Supreme Court in Ghanashyam Mishra (supra) and upon taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the corporate debtor of the appellant-assessee company, we are of the view that the appeals before this Tribunal are abated."*
>
> *7. By following the ratio of the above said decisions, we are of the considered view that once the Resolution Plan has been approved by the NCLT, thereafter, the present appeal stands abated as the CESTAT has become functus officio in the matter relating to the present appeal."*

29.2 Therefore, adopting the ratio of the decision cited, it held that once the Resolution Plan is approved by NCLT, the appeal stands abated and the CESTAT becomes *functus officio* in the matter.

30. To similar ratio is the judgement in a series of cases, including that in the case of **Orchid Chemicals & Pharmaceuticals Ltd. v. The Commissioner of G.S.T. & Central Excise**[26] wherein the Tribunal held as under:

> *"3.1 We find that the Mumbai Bench of the CESTAT, in the case of M/s. Jet Airways (India) Ltd. v. Commissioner of Service Tax-V, Mumbai & anor. In Final Order No. A/85896-85897/2023 dated 12.05.2023, has referred to an earlier order of the CESTAT in Final Order No.*

26 - Service Tax Appeal No. 42474 of 2014 – Final Order No. 40066 of 2024 dated 18.01.2024 – CESTAT, Chennai

*A/86026-86036/2022 dated 19.07.2022 in their own case, referred to the decision of the Hon'ble Apex Court in the case of Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors. (Civil Appeal No. 8129 of 2019) vide judgement dated 13.04.2021, and thereafter, has also referred to the C.B.I.C. Instruction No. 1083/04/2022-CX9 dated 23.05.2022, and ordered that the appeals before the Bench stand abated since the NCLT had approved the Resolution Plan in the Insolvency proceedings.*

*3.2 Respectfully following the above ratio of the co-ordinate Berich, we hold that the present appeal also stands abated."*

31. The appellant-company, to emphasize their contentions, have submitted that pre-deposit is no more than a security deposit and being so the Department could not have retained the same.

31.1 We feel the question whether pre-deposit is in the nature of a security deposit or otherwise, does not arise for consideration in the present matter in view of the fact that the Tribunal being a creature of the statute, is bound by the provisions of the statute and the undisputed fact of the appeals abating under the given circumstances renders the Tribunal as *functus officio.*

31.2 Moreover, it is not the question of the erstwhile appellant having successfully overcome the appeal filed and a decision granted in their favour. The appeal filed gets abated, consequentially resulting in as if there was no appeal filed in the matter by the appellants.

31.3 Thus, under the circumstances, when there is no authoritative judicial pronouncement about the legality of the issue raised for consideration in the appeals filed before the Tribunal and the Tribunal being bound by the wordings of the statute, we are convincingly of the opinion that the question of

addressing this issue any further beyond the scope of the powers vested under Rule 22 of The Rules does not arise.

32. In support of their stand that though the appeal does not survive the amount of pre-deposit has to be refunded to them, M/s. Tata Steel Limited have also referred to the decisions of the Hon'ble Delhi High Court in the case of *Voltas Limited v. Union of India & Ors.*[27] in Civil Writ Petition No. 4401 of 1998 as well as that of *State of Gujarat v. Essar Steel Ltd.*[9] in Special Civil Application No. 18128 of 2015 (*supra*), *inter alia* pointing out that the Hon'ble Delhi High Court in the case of *Voltas Ltd.*[27] *(supra)* had categorically held that pre-deposit paid by an appellant is an amount so deposited pending appeal and is available for appropriation or disbursal consistent with the Final Order maintaining or setting aside the order of adjudication. Upon a close reading of the said ratio in law, it is seen that the deposit made in terms of Section 35F of the Central Excise Act, 1944 is inextricably linked for its outcome with that of the Final Order, either maintaining or setting aside the adjudication order/order under challenge. In the present circumstances, however, as stated earlier, there is no such order in the instant case either setting aside or maintaining the same, as the appeal herein simply abates.

32.1 The order of abatement cannot be construed to mean that the issue involved has been decided in favour of the appellant. The question of refund of pre-deposit is a natural corollary to the successful outcome of the appeal. Provisions of Rule 22 are in

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27 - 1998 (47) DRJ (DB)

the nature of an exception where the issues raised in appeal filed are not required to be arbitrated upon and given a decisive pronouncement. To situations concerning insolvency proceedings, the provision of law available is Rule 22 of the CESTAT (Procedure) Rules, 1982, the scope of which has already been discussed in earlier paragraphs and which thereby have rendered the Tribunal *functus officio* in the matter. It is thus felt that no such order can be passed by the Tribunal in view of the existing provisions in law.

- **Applicability of Rule 22 of the CESTAT (Procedure) Rules, 1982 in cases where Resolution Plan is approved under the Insolvency and Bankruptcy Code, 2016**

33. An identical question regarding recovery or otherwise of the adjudged amount by the Revenue cropped up in the case of ***Ultratech Cement Nathdwara Cement Limited v. Commissioner of Customs, Jamnagar (Preventive)***[28] wherein the very question raised by the learned Sr. Counsel that Rule 22 of The Rules was applicable to a company only when it gets wound up was one of the issues under consideration. It was categorically asserted by the Tribunal that there is no provision under the Customs and Central Excise Act/Rules to give effect to NCLT proceedings. The Tribunal being a creature of the statute, in the absence of any explicit provision, it is handicapped to decide on the same. In fact, it is necessary to reproduce hereinbelow the finding and

28 - Customs Appeal No. 45 of 2012 – Final Order No. A/11268/2022 dated 20.10.2022 (CESTAT, Ahmedabad)

the manner in which the Tribunal dealt with the said question of law:

> *"4.2 From the above facts, we find that as per the resolution plan approved by the NCLT and in the light of Hon'ble Supreme Court judgment in the case of Ghanashyam Mishra & Sons Pvt. Ltd.-2021 SCC Online SC 313, it prima facie appears that the adjudged dues cannot be recovered by the department however, this issue has to be decided by the department and not by this tribunal. For this reason, that firstly, there is no provision made in the Customs and Central Excise Act to give effect of NCLT proceedings. This tribunal being creature under the Customs Act, even though the Insolvency and Bankruptcy Code have over riding effect over all the other acts in absence of any explicit provision under the Customs/Central Excise Act, this tribunal cannot decide finally whether the adjudged amount can be recovered by the department or otherwise. This issue has to be resolved by the respondent."*

We are thus of the view that this decision suitably answers the question of law raised and are in agreement therewith.

34. It may be worthwhile to mention that the Hon'ble High Court of Jharkhand at Ranchi in the case of ***ESL Steel Ltd. v. Principal Commissioner, Central Goods & Services Tax & Central Excise, Ranchi & ors.***[29]**,** after considering several of the pronouncements referred to supra, including that of *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd*.[30], and was concerned with the question of availment of transitional credit (TRAN-1) wherein the concerned company had undergone liquidation and the current management was not a taxpayer for the impugned

29 - W.P.(T) No. 1995 of 2023 vide its judgement dated 05/11.07.2023
30 - (2021) 9 SCC 657

period of procurement of inputs or capital goods, but the changed management had felt the need for recovery of such credit, by virtue of the Resolution Plan having been approved, of M/s. Vedanta Ltd. in terms of Section 31(1) of the Code, held as under:

> *"5. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein and the judgments passed by the Hon'ble Apex Court referred to herein above it appears that the Petitioner revised its TRAN- 1 on 30.11.2022 and sought to avail Input Tax Credit amounting to Rs. 92,13,412/- against the 86 invoices of Capital Goods, which were not availed earlier, under Section 140(1) of the CGST Act, 2017.*
>
> *It also emerges that as per the judgment of Hon'ble Apex Court in the case of Ghanshyam Mishra and Sons Private Ltd. (supra), no recovery and or proceeding can be continued against the Petitioner, for any dues prior to 17.04.2018 (Annexure-1) i.e., the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner. From perusal of the aforesaid Judgment, it is crystal clear that it is only the past obligation of the past period gets extinguished once the new management has taken over the Company as part of the Resolution Plan.*
>
> *6.* ***At the outset it is clarified that the contention of the Petitioner-Company that there is nothing in the said judgment which says that the past credit due to the company gets expunged; is misconceived. As a matter of fact, the liability of the earlier management may not be shifted to the current management but at the same time, the credit available to the earlier management will also not be available to the current management as the current management was not a taxpayer during the period of procurement of inputs or capital goods as availed in the TRAN-1 filed on 30.11.2022***
>
> *Accordingly, we hold that on the one hand; the Respondent No. 2 has illegally and arbitrarily confirmed the demand of Rs.6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017 and imposed interest and penalty, on the ground of irregular availment of transitional credit during the period 2017-18, which includes the transitional credit of Rs.5,10,21,204/- claimed by the Petitioner for the period prior to 17.04.2018 and balance amount of Rs.92,13,412/- has been claimed by the Petitioner as Transitional credit by filing new TRAN-1;* ***but at the same time the petitioner***

***can also not take advantage of the ITC of the earlier period i.e., any dues prior to 17.04.2018 (Annexure-1); the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner.***

.
.
.

*9. Consequently, the Order-in-Original dated 24.02.2023 (Annexure-9) passed by the Additional Commissioner, CGST & CEX, Ranchi (Respondent No. 2), whereby the Respondent No. 4, has confirmed the demand of Rs. 6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017, is quashed and set aside along with all consequential orders.*

***However, we categorically hold that the petitioner can also not take credit of the ITC of the earlier period i.e., prior to 17.04.2018 (Annexure-1); the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner. Hence, the petitioner is not entitled to claim of Rs. 92,13,412/- which has been claimed by the Petitioner as Transitional credit by filing new TRAN-1 in light of the Order passed by Hon'ble Supreme Court in the case of Union of India Vrs. Filco Trade Centre Put. Ltd. being SLP (C) No. 32709-32710/2018."***

(Emphasis supplied)

Viewed in the context, without amplifying, we would like to re-emphasize the obvious position of law that was laid down by the Hon'ble High Court.

35. The Hon'ble Apex Court, in the context of fastening duty liability against the legal representatives / estate of sole proprietor-deceased manufacturer, in the case of ***Shabina Abraham v. Collector of Central Excise and Customs***[31], had asserted that it was impermissible to continue with the assessment proceedings in the altered circumstances. It had dwelt extensively into the provisions of Section

31 - [2015 (322) E.L.T. 372 (S.C.)]

4(3)(a) of the Central Excise Act, 1944 regarding the "person who is liable to pay duty". The consequence of such an action undisputedly upon death, for instance, is that of abatement of the appeal in terms of Rule 22 of the Rules. The Hon'ble Apex Court observed therein that the Court cannot imply anything which is not expressed and it cannot import provisions in a statute so as to supply any assumed deficiency.

35.1 The Hon'ble Apex Court in *2015 (322) E.L.T. 372 (S.C.)* while approving the decision of the Hon'ble Karnataka High Court in the case of ***Commissioner of Central Excise, Bangalore-III v. Dhiren Gandhi***[32], held that the Hon'ble High Court was correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. Viewed in the backdrop buttressed by the provisions of Rule 22 of The Rules, the issue in the present case is somewhat akin to the given circumstances, but instead of the legal heir it is now the new operators, who in turn are operating the erstwhile company (original appellant/BSL), in accordance with the Resolution Process as laid out in law. Moreover, what is good for the goose has to be good for the gander as well.

35.2 The Hon'ble Apex Court in the said judgement noted and reiterated the legal position by citing the case of in *Partington v. A.G.*[33], as under:

> *"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to*

32 - 2012 (281) E.L.T. 64 (Kar.)
33 - (1869) LR 4 HL 100 at 122, Lord Cairns

> *recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible* ***in a taxing statute where you can simply adhere to the words of the statute****".*
>
> *(*Emphasis supplied)

35.3 In fact, the Hon'ble Apex Court further went on to state that in taxation matters, equitable considerations are of no significance, relevance or a consideration, in the following manner:

> *"32. In Cape Brandy Syndicate v. IRC, (1921) 1 KB 64 at 71, Rowlatt J. laid down :*
>
> > ***In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.***
>
> *33. This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in Commissioner of Sales Tax, Uttar Pradesh v. Modi Sugar Mills, 1961 (2) SCR 189 at 198 :-*
>
> > ***In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."***
>
> (Emphasis supplied)

36. This Tribunal in a series of cases, some of which are listed hereinbelow, upon proceedings having been initiated and Resolution Plan having been approved, in accordance with the provisions of the Code, repeatedly held the appellate proceedings before it as non-maintainable and accordingly dismissed the appeals as infructuous allowing them to abate, besides asserting that this Tribunal had become *functus officio* in matters relating to the said appeal:

*(i)* *McNally Sayaji Engineering Ltd. v. Commissioner of C.G.S.T. & C.X., Bolpur*[34]

*(ii)* *Ramsarup Lohh Udyog v. Commissioner of Central Excise, Haldia*[35]

*(iii)* *SPS Metal Cast & Alloys Pvt. Ltd. v. Commissioner of Central Excise, Bolpur*[36]

*(iv)* *Patanjali Foods Ltd. v. Commissioner of Customs*[37]

In this case, the Tribunal *inter alia* observed as under:

> *"12. Needless to mention, as observed by the Hon'ble Supreme Court and High Courts in a catena of cases that the Tribunal is a*
>
> *creature of the statute; it cannot travel beyond the express powers vested under the Statute or Rules framed under the statute while deciding a statutory Appeal filed before it against the Orders of the prescribed statutory authorities mentioned under the statute. The corollary, any order passed*

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34 - Service Tax Appeal No. 75134 of 2023 – Final Order No. 75255/2023 dated 25.04.2023 – CESTAT, Kolkata

35 - Excise Appeal No. 450 of 2011 – Final Order No. 76433/2023 dated 22.08.2023 – CESTAT, Kolkata

36 - Excise Appeal No. 431 of 2010 & anor. – Final Order Nos. 76241-76242/2023 dated 31.07.2023 – CESTAT, Kolkata

37 - Customs Appeal No. 2657 of 2012 – Final Order No. 21268/2023 dated 17.11.2023 – CESTAT, Bangalore

> *by the Tribunal beyond the vested powers under the statute would be non-est in law.*
>
> *13. In the circumstances, we are in complete agreement with the view consistently expressed by this Tribunal in a series of cases referred as above that the appeal abates once the IRP is appointed and/or Resolution plan approved.* ***Consequently, this appeal abates as per Rule 22 of CESTAT (Procedure) Rules, 1982 and this is the relief/Order could be passed as prescribed under the said Rule.****"*
>
> (Emphasis supplied)

*(v) Basai Steels Pvt. Ltd. v. Commissioner of Central Excise and Service Tax, Belgaum*[38]

It may be worthwhile to mention that the said order clearly distinguished *inter alia* the Hon'ble Apex Court's decision in *Ruchi Soya Industries Ltd. v. Union of India*[13] (*supra*) to circumstances concerned with Rule 22 of the Rules. Paragraph 16 of the said judgement is reproduced, to press the point:

> *"16. The judgements cited by the Ld. Advocate for the appellant may not be applicable to the facts and circumstances of the present case. In the case of Ruchi Soya Industries Ltd – 2022 (380) ELT 8 (SC), the matter was before the Hon'ble Supreme Court against the rejection of a writ of mandamus filed before the Hon'ble Karnataka High Court assailing applicability of Notification No. 38/2002-(NT) dated 13.06.2002 to imported crude palm oil. In that context the Hon'ble Supreme Court directed refund of the amount collected at the time of admission of appeals pursuant to the resolution plan approved by the NCLT. Similarly, in the GGS infrastructure Private Limited's case, the Hon'ble Bombay High Court was approached by filing writ under article 226 claiming relief set out in paragraph 2 of the said order. The Hon'ble High Court while allowing the writ petition passed certain direction to be implemented including refund of the amount after adjustment. Also, the Hon'ble Karnataka High Court in Ruchi soya Industries Ltd's case, while disposing the writ appeal against the order of the single judge,*

38 - Excise Appeal Nos. 1461 of 2011 and 20909 of 2016 – Final Order Nos. 21231-21232/2023 dated 09.11.2023 – CESTAT, Bangalore

> *dismissed the appeal on merit. In none of the above cases, the principle governing the circumstances after abatement of the appeals on fulfilment of conditions under Rule 22 of CESTAT (Procedure) Rules, 1982 by the Tribunal has been discussed and laid down."*

The Tribunal being a creature of the statute, cannot travel beyond the express powers vested under the statute or the Rules framed under the statute.

37. In all the above cases, the Tribunal has consistently held that the appeal abated (once the IRP is appointed and Resolution Plan approved) as per Rule 22 of the CESTAT (Procedure) Rules, 1982 and that is the only relief / Order that could be passed as prescribed under the Rules. Thus, any order passed by the Tribunal beyond the vested powers would *ipso facto* be non-est in law.

**CONCLUSION**

38. Having in depth analysed the legal position and the above referred case-laws *in extenso*, the position as explained with reference to Rule 22 and Rule 41 of the CESTAT (Procedure) Rules, 1982, the observations of the Hon'ble Apex Court in the case of *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd*. *(supra)*, the SOP prescribed by the C.B.I.C. dated 23.05.2022 referred to *supra* and the Resolution Plan as approved by the NCLT (extracted copy of which has been presented before us by the appellant-company), we are of the considered view that the present appeals, therefore, abate. With the abatement of the appeals, the Tribunal is rendered *functus officio* in matters relating to these appeals.

38.1 Moreover, we are of the considered view that the impugned Orders-in-Original (as mentioned in paragraph 1 of this Order) get merged with the order of the NCLT dated 15.05.2018, approving the Resolution Plan.

39. In view of the facts and circumstances of the case, the discussions *supra*, as a sequel, the only order that can be fastened on to this case is directing the abatement of the concerned appeals filed, with effect from the date of approval of the Resolution Plan by the NCLT vide its Order dated 15.05.2018.

40. The appeals are therefore disposed of accordingly.

(Order pronounced in the open court on **16.04.2024**)

Sd/-

**(R. MURALIDHAR)**
MEMBER (JUDICIAL)

Sd/-

**(RAJEEV TANDON)**
MEMBER (TECHNICAL)

Sdd