IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.230 OF 2024

Pr Commissioner Of Income Tax Central 4
Aayakar Bhavan, M.K. Road,
Mumbai- 400 02 ...Appellant
Versus
DBM Geotechnics And Construction Pvt Ltd
B-301, 3rd Floor, Centaur House,
Shantinagar Industrial Estate, Vakola,
Santacruz(E), Mumbai-400055. ...Respondents

Mr. Suresh Kumar, for Appellant.

Mr. Nishit Gandhi, for Respondents.

CORAM: G. S. KULKARNI & AARTI SATHE, JJ.

DATE: 17 JULY 2026

JUDGMENT (Per : G. S. Kulkarni, J)

1. This appeal, filed by the Revenue under Section 260A of the Income-tax Act, 1961, assails the order dated 12 May 2023 passed by the Income Tax Appellate Tribunal, Mumbai Bench ("Tribunal"), whereby the Revenue's appeal challenging the order dated 31 August 2018 passed by the Commissioner of Income Tax (Appeals) [CIT(A)] has been dismissed.The assessment year in question is Assessment Year 2012–13. The Revenue has proposed the following substantial questions of law for consideration in the present appeal:

QUESTION OF LAW

i. On the facts and in the circumstdnces of the case and in law, the Hon'ble ITAT erred in deleting the subcontract charges ofRs.15,37,38,561/- paid to M/s. Naftogasz (India) Pvt. Ltd. Without appreciating the fact that the onus cast upon the assessee was not discharged either during the assessment proceedings or remand proceedings."

> ii. On the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in concluding that no adverse material has been placed by the assessing officer to hold that the sub contract charges are bogus, without appreciating the fact that the Assessing Officer in the remand proceedings has merely submitted factual report."

2. Briefly stated, the facts:- By an assessment order dated 13 March 2015, the Assessing Officer completed the assessment for the assessment year in question under Section 143(3) of the Income-tax Act, 1961, making certain additions to the income returned by the assessee.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). By an order dated 31 August 2018, the Commissioner of Income Tax (Appeals) partly allowed the appeal and granted substantial relief to the assessee. Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Assessing Officer, on behalf of the Revenue, preferred an appeal before the Tribunal on 31 October 2018.

4. It so transpired that an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 came to be filed by am operational creditor of the respondent–assessee. By an order dated 30 August 2019, the National Company Law Tribunal ("NCLT") admitted the said application and commenced the Corporate Insolvency Resolution Process ("CIRP"). On 15 February 2021, the Committee of Creditors ("CoC") approved the Resolution Plan, which was subsequently approved by the NCLT by its order dated 25 January 2023.

5. It is the contention of the learned counsel appearing for the assessee that throughout the CIRP proceedings before the NCLT and the COC, the income-tax demand arising from the assessment order, which was the subject matter of the

appeal before the Commissioner of Income Tax (Appeals), did not form part of the Resolution Plan as approved by the COC and the NCLT. It is further submitted on behalf of the assessee that, once the assessee had substantially succeeded before the Commissioner of Income Tax (Appeals), no enforceable demand under the assessment order survived. It is submitted although the Revenue had challenged the order of the Commissioner of Income Tax (Appeals) before the Tribunal; however, mere pendency of such appeal did not result in the revival or crystallisation of any subsisting demand against the assessee. Consequently, there was no legally enforceable tax liability being asserted before the Committee of Creditors or incorporated in the Resolution Plan approved by the NCLT. It is on such backdrop on 12 May 2023 the ITAT dismissed the Appeal filed by the Revenue by the impugned order.

6. On 21 January 2024, the present appeal under Section 260A of the Act was filed by the Revenue Mr. Suresh Kumar, learned counsel for the Appellant/Revenue has made submissions on this Appeal. However, as rightly pointed out on behalf of the assessee, the proceedings would stand covered by the decision of the Supreme Court in **Samarth Lifters Private Ltd. Vs. DBN Geotechnics & Construction Private Limited &Anr.** which has referred to the prior decision of the Supreme Court in **Vaibhav Goel & Anr Vs. Deputy Commissioner of Income Tax & Anr.**[1] and considering the provisions of Section 31(1) of the Insolvency and Bankruptcy Code, 2016 and as also the decision rendered by the Supreme Court in the case of **Ghanshyam Mishra & Sons Pvt.Ltd. Through the**

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authorised signatory Vs. Edelweiss Asset Reconstruction Company Ltd. Through the Directors & Ors.[2] has categorically held that once the resolution plan was approved by the NCLT no belated claim could be included therein which was not made earlier. It is observed that if such demands were permitted to survive notwithstanding the approval of the Resolution Plan, it would frustrate the very object of the Insolvency and Bankruptcy Code, 2016, as it would render it impossible for the corporate debtor to revive and recommence its business on a clean slate. The relevant observations of the Supreme Court, which have a direct bearing on the issue involved in the present case, are reproduced below:

> 7. Section 31(1) of the IB Code provides for the legal effect of approval of the Resolution Plan. Section 31(1) reads thus:
> "(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in subsection (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed] guarantors and other stakeholders involved in the resolution plan.
> Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."
> (emphasis added)
> The words starting from 'including' and ending with 'owed' were incorporated in the IB Code with effect from 16t* August 2019. Section 31(1), as it stood before the amendment mentioned above and after the amendment, came for consideration in the decision of this Court in the case of Ghanashyam Mishra and Sons Pvt. Ltd.
> Paragraph 102 of the said decision reads thus:
> "102. In the result, we answer the questions framed by us as under:
> 102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

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102.2. The 2019 Amendment to Section 31 of the 1&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.
102.3. Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

(emphasis added)

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

9. We may note here that the decision of this Court in the case of Ghanashyam Mishra and Sons Pvt. Ltd.2 was specifically relied upon before the NCLAT. The decision of this Court was brushed aside by the NCLAT, firstly on the ground that the said decision was not relied upon before NCLT and, secondly, on the ground that the appellants have not challenged the Resolution Plan. Unfortunately, the NCLAT has ignored the binding precedent and the legal effect of the approval of the Resolution Plan as laid down in paragraphs 102.1 to 102.3 of the aforementioned decision. The reason given by NCLAT that the decision of this Court cannot be considered as it was not cited before the NCLT is perverse.

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

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

12. Once the Resolution Plan is approved by the NCLT, no belated claim can be included therein that was not made earlier. If such demands are taken into consideration, the appellants will not be in a position to recommence the business of the CD on a clean slate. On this aspect, we may note what is held in paragraph 107 of the decision of this Court in the case of Committee of Creditors of Essar Steel India Ltd'. Paragraph 107 reads thus:
"107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that

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> claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

7. It was pointed out to us that a Review Petition was preferred before the Supreme Court seeking a review of its judgment in *Vaibhav Goel & Anr.* The said Review Petition came to be dismissed by an order dated **29 January 2026**, reported in **2026 (2) TMI 375 (SC)**. The dismissal of the Review Petition lends further finality to the legal position enunciated in the said decision.

8. In the aforesaid circumstances, we are of the clear opinion that, in the present case, once no claim was lodged by the Revenue before the Committee of Creditors or the National Company Law Tribunal during the Corporate Insolvency Resolution Process, the Revenue cannot thereafter assert or seek to enforce its claim on the basis of the assessment order passed by the Assessing Officer. Even assuming that the Revenue were to succeed in its challenge to the order passed by the Commissioner of Income Tax (Appeals), and that a tax demand were to revive, such claim could not be realised unless it had been duly lodged and considered in the insolvency proceedings. Having failed to do so, the Revenue cannot now seek to recover the alleged dues dehors the approved Resolution Plan.

9. In that view of the matter, the questions of law sought to be raised by the

Revenue are wholly academic and in fact no question of law arises for consideration in the aforesaid facts and circumstances warranting adjudication of the present appeal.

10. Appeal is accordingly dismissed. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)