

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**MA (IBC) No.02 of 2021
IN
C.P. (IB) No.20/GB/2017**

**Coram: Hon'ble Shri H.V Subba Rao, Member (J) : Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T) : Video Conferencing**

IN THE MATTER OF:

Assam Company India Ltd.
(BRS Ventures Investment Ltd. for Assam Company India Ltd)... Applicant /CD
Versus
Srei Infrastructure Finance Ltd. ... Financial Creditor
Versus
1. Principal Chief Commissioner of Income Tax, New Delhi & 3 Ors.
... Respondents

Section: Under Section 60(5) (c) of Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of NCLT Rules, 2016

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY
TRIBUNAL, GUWAHATI BENCH ON 30.11.2021**

S.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NONE	-	Petitioner	Present
2.	NONE	-	Respondent	in video Conference

ORDER

The Applicant is represented through respective Learned Counsel (s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, through Video Conferencing vide separate sheet.

**Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

**Sd/-
(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority**

moratorium under Section 14 of the Code. By the said order, this Tribunal also appointed an Interim Resolution Professional (IRP) for collating the claims of the Applicant.

3. During the CIRP the respondents did not file its claim with the IRP except for the assessment years 2013-14 and 2014-15. Thereafter, the IRP was replaced by the Resolution Professional (RP) who floated Expression of Interest for inviting potential Resolution Applicants for submitting their Resolution Plans and pursuant to such Expression of Interest, the Resolution Plan as submitted by BRS Ventures Investment Ltd. [BRS Ventures), a Company incorporated in United Arab Emirates (UAE) and having its Registered Office at Unit S503A, Level 5, Emirates Financial Towers, Dubai International Finance Centre, P. O. Box No. 507117, Dubai, UAE was duly accepted by the Committee of Creditors (COC) through an e-voting meeting held on 10.08.2018. Subsequently, the said Resolution Plan submitted by BRS Ventures has been approved by this Tribunal by an order dated 20.09.2018.

4. That in the approved Resolution Plan it was clearly stated that barring aside the claims admitted and forming part of the Resolution Plan any other claim and / or demand prior to the effective date shall stand extinguished.

5. That the Applicant herein has filed an Application being IA No. 32 of 2020 before this Hon'ble Tribunal for extinguishment of all claim of the Principal Commissioner of Income Tax, Circle-2, Dibrugarh, the Respondent therein for the period prior to the effective date i.e. 20.09.2018 and this Hon'ble Tribunal vide Order dated 10.02.2021 has allowed the prayer of the applicant herein. A copy of the said Order dated 10.02.2021 passed in IA No. 32 of 2020 is attached with the Application.

6. That after passing of such Order by the Hon'ble Tribunal, the Respondents have issued a show cause notice on 19.04.2021 with compliance date of 21.04.2021 along with a draft assessment order notice.

7. That the Applicant herein, in response to such show cause notice and draft assessment order filed its reply on 21.04.2021 thereby enclosing a copy of the Order passed in IA No. 32 of 2020 by this Hon'ble Tribunal dated 10.02.2021 wherein and whereby this Hon'ble Tribunal was pleased to extinguish all other claims prior to the effective date i.e. 20.09.2018 in terms of the approved Resolution Plan.

8. That the Respondents herein however in gross contravention of such Order of this Hon'ble Tribunal dated 10.02.2021 and the provisions of law under the IBC, 2016, have passed an assessment order for the assessment year 2018-19 on 24.04.2021 demanding payment to a sum of Rs. 7,63,18,920.00 (Rupees Seven Crores Sixty-Three Lakhs Eighteen Thousand Nine Hundred and Twenty Only) as tax liability.

9. That in the said order, the Respondents have completely misinterpreted the Order dated 10.02.2021 passed by this Hon'ble Tribunal by holding that any claim or demand raised after the effective date even though it pertains to a demand prior to the effective date shall not be bound by such order and thus, any demand raised is valid. In this regard, it is further stated that such proposition of law is palpably incorrect and is liable to be nipped in the bud. It is also stated that once the resolution plan has been approved by the Adjudicating Authority, the terms and conditions of such resolution plan shall be binding on the corporate debtor and its employees, members, including the Central Government, any State Government or any local authority and as such the Respondents have blatantly ignored the provisions of law and acted against the object, scope and interest of the IBC, 2016.

10. It is submitted that the Hon'ble Supreme Court of India in the matter of Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67/2019 and other petitions [Judgment dated 15th November, 2019] while setting aside the judgment dated 4th July, 2019 of NCLAT and upholding the constitutional validity of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 has held that (d) *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 the successful resolution applicant and (e) 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 CD*".

In the light of the above, it is reiterated that the Respondents have manifestly failed to apply the Principles of Law laid down in the said Judgment as well as the

Code, 2016 and acted in a mechanical manner while raising such frivolous and purported demand.

11. It is stated that the Hon'ble Tribunal had categorically upheld the terms of the resolution plan and has relied upon Clause 12.1.12 of the resolution plan which states that in accordance with the forgoing, all claims (whether final or contingent, whether disputed or undisputed and whether or not notified to or claimed against ACIL) of all Government Authorities (including in relation to Taxes, and all other dues and statutory payments to any Government Authority) relating to period prior to the Effective Date, shall stand fully and finally discharged and settled. To the contrary, the Respondents in the instant case have deliberately omitted consideration / adherence to the said clause and the express order passed by this Hon'ble Tribunal in IA No. 32 of 2020, while concluding the assessment order and have erringly held that the instant claim is made after the effective date which is manifestly against the true nature, spirit and scope of the order. Therefore, the Respondents had no reason to raise demand for Rs. 7,63,18,920.00 (Rupees Seven Crores Sixty-Three Lakhs Eighteen Thousand Nine Hundred and Twenty Only) as tax liability for the financial year ending 31st March, 2018, assessment year 2018-19 which is prior to the effective date i.e. 20.09.2018, the date of the order passed by this Hon'ble Tribunal approving the resolution plan.

12. Further, it is stated that this Hon'ble Bench while approving the resolution plan has categorically confirmed that all non-compliances, breaches and defaults of Assam Company India Ltd. for the period prior to the effective date i.e. 20.09.2018 shall be deemed to be waived by the concerned governmental authorities. It has been categorically approved and held by this Hon'ble Tribunal in IA 32 of 2020 that since the Respondent have not filed any claims for the period from 1986-87 except 2013-14 and 2014-15 before the Resolution Professional / before the approval of the Resolution Plan, the left over claims of the Respondents from 1986-87 till approval of the Resolution Plan, if it is filed now or in the future, is not to be entertained by the Resolution Applicant / Corporate Debtor.

13. **It is submitted by the Petitioners that the Respondents have not filed any claims before this Bench for settlement of any of its dues other than the claim for the assessment years 2013-14 and 2014-15 before the Resolution**

Professional, which was admitted by the Resolution Professional and was paid to the respondents.

14. It is submitted that in accordance to clause 12.1 of the Resolution Plan, which deals with other liabilities including contingent liabilities as follows:-

"12.1 Other Liabilities including Contingent Liabilities:

12.1.1 Except to the extent of payments to be made to the Operational Creditors and other creditors under paragraph 3 and 5 above, the Resolution Applicant and ACIL shall have no liability towards any Operational Creditors and other creditors with respect to any claims (as defined under the Code) relating in any manner to the period prior to the Effective Date. Any such liability shall be deemed to be owed and due as of the Insolvency Commencement Date, the liquidation value of which is NIL and therefore no amount is payable in relation thereto. All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards Operational Creditors and other creditors shall immediately, irrevocably and unconditionally stand released and discharged, and the Operational Creditors and other creditors shall waive all rights to invoke or enforce the same.

12.1.2 In accordance with the forgoing all claims (whether final or contingent, whether disputed or undisputed and whether or not notified to or claimed against ACIL) of all Government Authorities (including in relation to Taxes, and all other dues and statutory payments to any Government Authority) relating to the period prior to the Effective Date, shall stand fully and finally discharged and settled."

15. It is also observed that **in the approved Resolution Plan, it was clearly stated that barring aside the claims admitted and forming part of the Resolution Plan any other claim and/or demand prior to the effective date shall stand extinguished. Under these circumstances, the applicant has filed the present application with the prayers as aforesaid.**

16. While the matter came up on 02.08.2021, the learned Counsel appearing for the Govt. side was permitted to file their reply to the IA as prayed for within 15 days with a copy to the petitioner / Resolution Applicant. Likewise, the petitioner / applicant herein was also directed to file reply if any, within 7 days from the date of receipt of the reply from the respondent and to file an affidavit within 15 days of that order stating that they have been paying all current statutory dues up to date especially EPF, Income Tax, GST and other dues like electricity etc.

17. **On the other hand, the Respondents have submitted that:**

- (a) The contentions made by the applicant is not correct as the claim was made by the respondents before the IRP in the prescribe format within the time stipulated and as per the terms of this Bench.
- (b) The assessment proceedings for the assessment year 2018-19 does not fall within the purview of the Order of this Bench dated 10.02.2021 and the demand of Rs. 7,63,18,920.00 has been raised in the current financial year on 24.04.2021 and hence, this is not a claim of demand prior to the effective date.
- (c) The Assessing Officer while passing the assessment order for the assessment year 2018-19 has discussed clearly in his order that the present case is not covered under the order passed in IA No. 32/2020 dated 10.02.2021 since the order speaks about the demands raised or claimed prior to the effective date i.e. 20.09.2018.
- (d) The decision of the Hon'ble Supreme Court in the case of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. in Civil Appeal No. 8766-67/2019 is not applicable in this case since the demand of Rs. 7,63,18,920.00 for the assessment year 2018-19 was raised in the current financial year 2021-22 and therefore, question of submission before the RP for admission does not arise as this is not a demand that was outstanding at the time of pendency of resolution proceedings.

18. **The Applicant has further submitted that:**

- (a) It is denied that the scrutiny proceedings for the assessment year 2018-19 does not fall under the purview of the order of the Hon'ble Tribunal dated 10.02.2021. At the time of submission of the claim before the RP the Respondents failed to submit its total claim which the Respondents are claiming at a belated stage.
- (b) The claim submitted by the Respondents before the RP was duly paid for the assessment years 2013-14 and 2014-15. Therefore, the claim of

the Respondents for assessment year 2018-19 which is prior to the effective date – 20.09.2018 cannot be allowed and / or permitted.

- (c) The Resolution Plan of BRS Ventures Investment Ltd. (RA) was accepted by the CoC of the CD/Applicant and was duly approved by the Hon'ble Tribunal by its Order dated 20.09.2018 and in terms of the said resolution plan all liabilities prior to the effective date stands extinguished, which is supported by the decision of the Hon'ble Supreme Court rendered in the case of CoC of Essar Steel India Ltd. Vs Satish Kumar Gupta & Ors. (2019 SCC Online SC 1478).
- (d) The demand of Rs. 7,63,18,920.00 made by the Respondents for assessment year 2018-19 (financial year 2017-18) should be set aside as this demand is prior to the effective date 20.09.2018. The law is well settled that any liability prior to the effective date stands extinguished even if such liability is raised subsequently after the resolution plan has been approved by the Hon'ble Tribunal. Therefore, submissions made by the Respondents that the demand has been raised subsequently after the approval of the resolution plan has no bearing in the light of the aforesaid judgment of the Hon'ble Supreme Court rendered in the case of CoC of Essar Steel India Ltd. Vs Satish Kumar Gupta & Ors. (2019 SCC Online SC 1478).
- (e) It is denied that the proceedings under Section 143(3) of the Income Tax Act, 1961 for the assessment year 2018-19 was initiated for regular assessment or it is an issue of non-compliance or breach or default of the applicant as alleged.
- (f) Further, it is denied that the instant case is not an issue of left over claims from 1986-87 till approval of the resolution plan or demand which has been raised after passing of order under Section 143(3) of the Income Tax Act, 1961 on 2.4.04.2021.

19. It is further submitted that the applicant has incurred losses of Rs. 10161.52 Lakhs as on 31.103.2019 and therefore, payment of any taxes does not arise and that

the documents placed on record in paragraph No. 2 be treated as part of annexures of the IA No. 32/GB/2020.

20. It is further submitted that the Respondents have not filed their claims for the assessment year 1986-87, except 2013-14 and 2014-15 during the CIRP period / before Resolution Plan is approved.

ORDER

21. Heard both the sides at length. The Respondents have submitted that the Demand made by them, now is relating to the Assessment Year 2018-19 i.e. before the date the Resolution Plan was approved. But it is a fact that they have made demand on 24.04.2021 only i.e. around 2 ½ years after the approval of the Resolution Plan by this Bench. This demand was not there when the plan was submitted by the RA and approved by this Bench.

It is appropriate to bring the order of the Supreme Court of India in the matter of Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67/2019 and other petitions [Judgment dated 15th November, 2019], where while setting aside the judgment dated 4th July, 2019 of NCLAT and upholding the constitutional validity of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, held that ***"...(d) 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 the successful resolution applicant and (e) 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 CD"***.

Hence, no one can come and raise demand/file claims after the Resolution Plan is approved and plan is under implementation. If claims are allowed to be admitted, as and when the claims are submitted, then the Resolution Plan of the Stressed Assets shall fail and the objectives of the IBC shall be defeated.

22. Since the Respondents have not filed this claims before the Resolution Professional or before the approval of the Resolution Plan on 20.09.2018, it is not to be entertained by the Petitioner here i.e. the successful Resolution Applicant now.

22.1 Company can operate its Bank Account without any obstructions from the Income Tax Department.

22.2 The Resolution Applicant / the Petitioner is hereby directed to strictly implement the Resolution Plan as approved in time without any violation.

22.3 The Petitioner is further directed to file an Affidavit compliance report within 15 days of this order before the Registry stating the details of amount month wise that the Company has been paying all the statutory dues especially, EPF, Income Tax, GST etc. from the date of the Resolution Plan is approved till the order of this date.

22.4 The Monitoring and Supervising Committee appointed during the approval of the Resolution Plan is directed to file the Status Report of the implementation of the Resolution Plan approved, on E-portal and hard copy before this Registry within 21 days from today.

22. Accordingly the MA (IBC) No. 2/GB/2021 is disposed of with the above observations and directions.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority
(R.M/D- 30.11.2021/

Sd/-
(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority