

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)
KOLKATA**

I.A No. 549/KB/2022
And
I.A No. 792/KB/2022
In
C.P (I.B) No. 570/KB/2018

*Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the
National Company Law Tribunal rules, 2016*

In the matter of:

Aristo Texcon Private Limited

....Corporate Debtor

I.A No. 549/KB/2022

In the matter of:

Jagannath Financial Advisory Private Limited

...Applicant

-Versus-

1. Kolkata Municipal Corporation, having its head office at 5, S.N. Banerjee Road, Kolkata - 700013
2. The Assessor Collector (South), Kolkata Municipal Corporation, having its Office at 5, S.N. Banerjee Road, Kolkata – 700013.

....Respondents

I.A No. 792/KB/2022

In the matter of:

Jagannath Financial Advisory Private Limited

...Applicant

-Versus-

1. Principal Commissioner of Income Tax, Central Circle 2, Kolkata. Aayakar Bhawan, 110, Shanti Pally, Kolkata – 700107.
2. Assistant Commissioner of Income Tax, Office of the Assistant Commissioner of Income Tax, Cnetral 3(4), Aayakar Bhawan, 110, Shanti Pally, E M Bypass, Kolkata – 700107, West Bengal.
3. Income Tax Officer, TDS Circle 1(1), 10 Middleton Row, Kolkata – 700071, West Bengal.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

I.A No. 549/KB/2022 And I.A No. 792/KB/2022
In C.P (I.B) No. 570/KB/2018

4. Income Tax Department Centralised processing Centre, 1st Floor Prestige Alpha No.48/1 48/2 Beratenaagrahara Begur, Hosur Road, UttarahalliHobli, Bengaluru, Karnataka – 560100.

....Respondents

**Date of hearing: 20/01/2023
Order Pronounced on : 05/06/2023**

Coram:

Smt.Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing / Physical)

Mr. PatitaPabanBishwal, Adv.	:	For Applicant in IA 338/2020
Mr. Rishav Banerjee, Adv.	:	For SRA
Mr. MadhusmitaSenapati, Adv.		
Ms. JoveriaSabbah, Adv.		
Mr. Suranjana Chatterjee, Adv.		
Mr. Rajdip Roy, Sr. Adv.	:	For K.M.C in IA 549/2022
Mr. GoutamDinda, Adv.		
Mr. AnindyaSundar Chatterjee, Adv.		
Mr. DebasishChakraborti, Adv.	:	For NEDFI
Mr. Sucharish Chakraborty, Adv.		

COMMON ORDER

Per: Balraj Joshi, Member (Technical)

1. The Court convened through hybrid mode.
2. **I.A No. 549/KB/2022**
 - 2.1 This application has been filed by Jagannath Financial Advisory Private Limited(‘**Successful Resolution Applicant**’ or ‘**SRA**’) against Kolkata Municipal Corporation &Anr, *inter alia*, seeking for the following reliefs;
 - a) *Order be passed directing Respondent No. 1 to extinguish Property Tax / Municipal Tax dues qua Corporate Debtor’s properties located*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

I.A No. 549/KB/2022 And I.A No. 792/KB/2022
In C.P (I.B) No. 570/KB/2018

in 21, Pottery Road, Kolkata-700015 (Assessee No. 110561104207) accruing before 20 August, 2019 against the Applicant and the Corporate Debtor and directing Respondent No. 2 to accept Property Tax / Municipal Tax dues accruing from 20 August, 2019;

- b) Order be passed directing Respondents to forthwith withdraw the Property Tax Demand Bill of the Corporate Debtor as demanded in the official website of the Kolkata Municipal Corporation and to issue fresh bill on and from 20 August 2019 and to extinguish all previous property tax liabilities of the Corporate Debtor prior to 20 August, 2019 and/or penalty imposed thereon;*
- c) Ad-interim orders in terms of prayers above;*
- d) Such further orders or directions be passed as this Hon'ble Tribunal may deem fit and proper;”*

2.2 The applicant states and submits that it is clearly mentioned in the part VI of the approved Resolution Plan under the heading "Waivers, Reliefs and Exemptions" that all past liabilities and proceedings prior to date of approval i.e. 20th August, 2019 stands extinguished in totality.

2.3 It is stated that as per the provisions of Section 31 of the Insolvency & Bankruptcy Code, 2016 the approved Resolution Plan 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.

2.4 The applicant states and submit that the Respondent No. 1 i.e. Kolkata Municipal Corporation levies Property Tax / Municipal Tax of Rs. 18,607 / - per quarter for one of Corporate Debtor's properties located in 21, Pottery Road, Kolkata-700015 (Assessee No. 110561104207), totaling Rs.19,83,677 / - which is due since 2008-2009 along with Interest of Rs. 8,82,577.22/-.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

I.A No. 549/KB/2022 And I.A No. 792/KB/2022
In C.P (I.B) No. 570/KB/2018

- 2.5 The applicant states that the Corporate Debtor *vide* its letter dated 3rd July, 2021 requested the Respondent No.2 to extinguish all Property Tax obligations of the Corporate Debtor prior to 20th August, 2019 in terms of the Order passed by this Hon'ble National Company Law Tribunal, Kolkata Bench, under the Provisions of the Insolvency and Bankruptcy Code, 2016 and to issue a fresh demand Bill of the property Tax on and from 20 August, 2019.
- 2.6 The Corporate Debtor again requested the Respondent No. 2 enclosing all the relevant documents to extinguish all previous demands which were payable before 20th August, 2019 and also request to issue fresh demand bill for property Tax of the Corporate Debtor on and from 20.08.2019 to till date, so that the Applicant can able to make payment.

3. I.A No. 792/KB/2022

- 3.1 This application has been filed by Jagannath Financial Advisory Private Limited (**'Successful Resolution Applicant' or 'SRA'**) against Principal Commissioner of Income Tax&Ors, *inter alia*, seeking for the following reliefs;
- a) *Necessary direction and/or directions upon the Respondents to forthwith withdraw all Notices issued under section 142(1) of the Income Tax Act, 1961.*
 - b) *Necessary direction and/or directions upon the Respondents to forthwith withdraw all Notices issued under section 147/148/143 of the Income Tax Act, 1961.*
 - c) *Necessary direction and/or directions upon the Respondents to forthwith withdraw all Notices issued under section 148A of the Income Tax, 1961.*
 - d) *Necessary direction and/or directions upon the Respondents to close the proceedings against the corporate debtor prior to 20th August, 2019*
 - e) *Necessary direction and/or directions upon the Respondents to waive the demand amount prior to 20th August, 2019 in terms of the Order dated 20th August, 2019 passed by this Hon'ble National Company Law Tribunal,*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

I.A No. 549/KB/2022 And I.A No. 792/KB/2022
In C.P (I.B) No. 570/KB/2018

Kolkata Bench, under the Provisions of the Insolvency and Bankruptcy Code, 2016.

f) Ad-interim orders in terms of prayer above;

g) Such further order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper;

- 3.2 The Applicant states and submits that the resolution plan submitted by the applicant was approved by the Committee of Creditors of the Corporate Debtor and such resolution plan was ultimately approved by this Adjudicating Authority on 20th August, 2019
- 3.3 The applicant further submits that at Page No.54- 55 of the approved Resolution Plan in Part-VI, Schedule-I, 3(a) it is clearly mentioned which is as follows:
“2 (a) The relevant Tax authorities to consider providing relief from applicability of and payment of taxes and duties under provisions of Direct tax laws and all indirect Tax laws which may arise as a result of implementation of the Plan either on the Resolution Applicant or the Corporate Debtor who is likely to be impacted due to implementation of the Plan.”
- 3.4 Pursuant to the approval of the said Resolution plan by this Adjudicating Authority, all past liabilities and proceedings of Aristo Texcon Private Limited, i.e., the Corporate Debtor prior to date of approval of the Resolution Plan stands extinguished in totality including income TaxLiabilities and any proceeding related to the period prior to 20.08.2019
- 3.5 The Applicant states and submits that the Corporate Debtor has received a notice under section 142(1) of the Income Tax Act. Subsequently, after receiving the notice the Applicant has informed the Respondents about the order dated 20th August, 2019.
- 3.6 Despite making repeated requests to the Respondent Nos. 1 to 4, the Respondent Nos. 1 to 4 had not taken any steps and moreover Respondent No. 2 issued Show Cause Notice and Respondent No. 3 issued a demand notice against the Corporate Debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

I.A No. 549/KB/2022 And I.A No. 792/KB/2022
In C.P (I.B) No. 570/KB/2018

- 3.7 The Applicant further submits that Despite the fact that the respondent knowing fully well, is refusing to withdraw the suspension order of Import and Export Code of the Corporate Debtor as well as to restore the same to its original number, for which the applicant is unable to take over the Corporate Debtor in its entirety.

Analysis and Findings

4. We have heard the Ld. Counsels appearing in I.A No. 549/KB/2022 and I.A No. 792/KB/2022, and perused the records. Since, the issue involved in both the IA's are same; we are dealing with both of these IAs together by way of this common order.
5. The main concept behind the resolution of the insolvency in the context of IBC 2016 is to put the Corporate Debtor back on its feet. The generic architecture of the code revolves round enabling the Corporate Debtor to come out of the insolvency by virtue of multifaceted and well defined supporting scheme, in which various stakeholders have to pitch in through a well-defined algorithm. In this context we rely upon the judgment of Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,***¹

“wherein the Hon'ble Supreme Court has held in para 95(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 Govt, any State Govt 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. The Hon'ble Supreme Court

¹2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)

I.A No. 549/KB/2022 And I.A No. 792/KB/2022
In C.P (I.B) No. 570/KB/2018

also held that all the dues including the statutory dues owed to the Central Govt, any State Govt 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.”

6. Further, in ***Ghanashyam Mishra and Sons Pvt Ltd (Supra)*** the Hon'ble Supreme court has also opined thus:

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.”

(Emphasis implied)

7. Part VI, Schedule I of the Resolution Plan (Waivers, Reliefs and Exemptions) at page 88 states, as follows;

“The Registrar of Companies, Kolkata to take on record and Implement the Plan, upon approval of the Plan by NCLT in a timely manner, considering the waivers and exemptions required from compliance of the various provisions of the Companies Act, 2013 as defined in the order of the Hon'bie NCLT.”

8. In view of the above, in *I.A No. 549/KB/2022*, we hereby direct the authorities respondent No. 1 and 2 not to claim the past dues before the said

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

I.A No. 549/KB/2022 And I.A No. 792/KB/2022
In C.P (I.B) No. 570/KB/2018

date on 20August, 2019 and also issue the revised details as requested by the applicant *vide* letter dated 23.03.2022.

- 9.** Further, in I.A No. 792/KB/2022, we hereby direct the respondent authorities to withdraw all the notices issued to the Corporate Debtor as mentioned in prayers (a) to (c) of the IA and also to waive the demand amount prior to 20th August, 2019 in terms of the Order dated 20th August, 2019 passed by this Adjudicating Authority.
- 10.** Accordingly, prayers (a) and (b) in I.A No. 549/KB/2022 and prayers (a) to (e) in I.A No. 792/KB/2022 are allowed. Hence, the IA's stands disposed of.
- 11.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is pronounced on 05th day of June, 2023

SA,LRA