



IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK

IA (IB) No. 206/CB/2022  
IN  
TP No. 44/CTB/2019  
Connected with  
[Earlier CP (IB) No. 373/KB/2017]

In the Matter of:

An application under section 60 (5) (C) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016;

-And-

In the Matter of:

State Bank of India, State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai, Maharashtra 400 021 and branch at Corporate Accounts Group Branch, Sribhiddhi Bhawan 2<sup>nd</sup> Floor, 34, Jawaharlal Nehru Road, Kolkata 700 071.

... **Financial Creditor**

-Versus-

Adhunik Metaliks Ltd., a company incorporated under the provisions of Companies Act, 1956 having its Registered Office at Chadri Hariharpur, Dist.: Sundergarh, Odisha- 770 039. Through Authorized Representative Mr. Rakesh Pujari;

... **Corporate Debtor**

-And-

In the Matter of:

Adhunik Metaliks Ltd., a company incorporated under the provisions of Companies Act, 1956 having its Registered Office at Chadri Hariharpur, Dist.: Sundergarh, Odisha – 770 039. Through Authorized Representative Mr. Rakesh Pujari.

... **Applicant**

-Versus-

Assistant Commissioner of Income Tax, Central Circle – 1(1), Kolkata. At Aayakar Bhawan Poorva, 110 Shantipally, E.M. Bypass, Kolkata West Bengal – 7000107.

... **Respondent**



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In re: Adhunik Metaliks Ltd Vs. Assistant Commissioner of Income Tax, Central  
Circle – 1(1), Kolkata

**Coram:**

Shri P. Mohan Raj : Member (Judicial)  
Shri Satya Ranjan Prasad : Member (Technical)

**Order reserved on: 14.03.2023**  
**Order pronounced on: 21.03.2023**

**Counsels on Record:-**

For the Applicant Mr. Saswat Kumar Acharya, Advocate.  
For the Respondent Mr. Sidharth Sankar Mohapatra, Advocate.

**ORDER**

*Per P. Mohan Raj, Member, (Judicial)*

1. This application is filed by the successful resolution applicant of corporate debtor of Adhunik Metaliks Ltd to quash the demand notice of penalty and dated 15.07.2022 Annexure '12' series and notice of penalty dated 17.03.2022 Annexure '9' issued by the Respondent and for other orders.

2. The respondent in the application, appeared and filed replies.

3. The financial creditor State Bank of India filed petition C.P No.373/KB/2017 against the corporate debtor ADHUNIK METALS LTD for an initiation of Corporate Insolvency Resolution Process before the National Company Law Tribunal, Kolkata, under Section 7 of the Insolvency and Bankruptcy Code, 2016. The CIRP was ordered on 03.08.2017. The resolution Professional of corporate debtor ADHUNIK METALS LTD effected, public announcement inviting claims from the creditors of the corporate debtor. The last date for the submission of claims by the creditors was 18.08.2017. The Respondents not submitted its claim before the Resolution professional. It is stated that since there was no claim as on last date of filing of claims i.e., 18.08.2017 the respondent not submitted any claim. The resolution plan submitted by the Liberty House Group Pvt Ltd was approved by this Adjudicating Authority on 22.06.2018. This



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Adjudicating Authority later by order dated 09.07.2019 ordered liquidation. The liquidation order was set aside by NCLAT by order dated 03.03.2020 and directed to implement the resolution plan in letter and spirit and claims of all the creditors were settled as per the approved resolution plan. The respondents without filing any claims before the Resolution Professional after the approval of Resolution Plan, now they are sending impugned demand notices/orders claiming outstanding dues relating to the period prior to approval of resolution plan.

4. After the approval of Resolution Plan, the respondent passed an order on 17.03.2022 under section 147/144 of IT Act 1961 claiming an amount of Rs.50,23,23,220/- for the Assessment year 2014-2015. The respondent issued another notice dated 25.05.2022 demanding the said amount of Rs. 50,23,23,220/- After the receipt of this notice, applicant sent detailed reply by e-mail dated 30.05.2022 explaining that after the approval of resolution plan their claims for the period pertaining to prior to approval of plan dated 22.06.2018 are unsustainable, and the claims are extinguished by operation of law. Even after the receipt of the replies sent by the applicant, the respondent continuously raising their unlawful demands. The respondent subsequently issued order dated 15.07.2022 and claims a sum of Rs.8,90,80,992/- stating that mistake crept in the order dated 17.03.2022.

5. The respondent filed its reply stating that since there was no demand as on the last date of filing claims hence the respondent had not submitted any claim. Further it is stated that since demand in this case arose only after the approval of resolution plan i.e., on 17.03.2022 the contention of the applicant is that since all the dues exist prior to approval of resolution plan stand extinguished, but in this case claim itself raised after the approval of resolution plan hence the dues claimed in this application is not extinguished. On the respondent side relies upon the Apex court Judgment Sundaresh Bhatt Liquidator of ABG Shipyard vs Central Board of Indirect Taxes and Customs (2023) 1 SCC 472 there it is held in para 57(1) that



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Once moratorium is imposed in terms section 14 or 33(5) of the IBC as the case may be the respondent authority has limited jurisdiction to assess the quantum of custom duty and other levies. There is no pale of controversy in this regard, but the Apex in the supra citation in para 57(2) held that then the authorities shall submit its claim under IBC 2016 within the time limits and procedure before the Adjudicating Authority. The supra citation is not helpful to the case of the applicant.

6. In this case the moratorium period expired with approval of resolution plan on 22.06.2018 in view of proviso to sub-section 4 of section 14 of IBC. In this case the respondent passed the demand at first on 17.03.2022 then corrected order on 15.07.2022, during that period no moratorium was exist. In any way the citation relies by the respondent is not support its case. The respondent raised the demand for the assessment years 2014-15.

7. Admittedly, the respondents herein had not submitted its claims before the resolution professional. The impugned demands/orders appearing in Annexure 12 & 9 are issued by the respondent claiming the dues for the period prior to the admission of CIRP and approval of Resolution Plan. As per Section 31(1) of IBC, 2016 once Resolution Plan is approved the debts for which no provision is made in the resolution plan shall stand extinguished. No claim can be made against the successful resolution applicant this includes the Government dues. This position is made clear after the amendment made in Section 31 of IBC. The Hon'ble Apex Court held in **Ghanshyam Misra & Sons Private Limited -vs- Edelweiss Asset Reconstruction Company Limited Para 77 as follows: -**

*“77. It is clear, that the mischief, which was noticed prior to amendment of Section 31 of I & B Code was, that though the legislative intent was to extinguish all such debts owed to the Central Government, any State*



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*Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by NCLT; on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position, that once such a resolution plan was approved by the Adjudicating Authority, all such claims / dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.”*

8. Further, the resolution plan approved by the adjudicating authority under Section 31 (1) of IBC, 2016 binding upon all concern including central government, State Government and local authorities. All the dues payable by the corporate debtor not reflected in the approved resolution plan will be extinguished. this position of law is reiterated by the Apex Court in **Ghanshyam Mishra and Sons. Versus Edelweiss Asset Reconstruction (2021) (SCC657**

*“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.*

On the applicant side relies upon the Judgment of Division Bench of Orissa High Court passed in W.P.(C) No.1553 of 2022 and batch order dated 08.12.2022. The writ petitions were filed by the Applicant herein there, after referring the Apex court citation **Ghanshyam Mishra and Sons. Versus Edelweiss Asset Reconstruction**



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(2021) (SCC657 it is held that all the demand being prior to the date of commencement of the resolution plan approved by NCLAT the court quashed all the demands, which have been challenged in the writ petitions.

10. From the above discussion it is made clear that since the respondent failed to submit its claims, before the resolution professional now, the respondent has no right to claim and proceed against the applicant. Hence the request of the applicant is needs to be considered.

11. In the result the impugned demand notice and order dated 15.07.2022 Annexure '12' series and notice of penalty dated 17.03.2022 Annexure '9' issued by the Respondent are here by quashed. Thus, the Application is **ALLOWED**.

12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2023.03.21 14:30:38 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN  
RAJ  
Date: 2023.03.21 15:42:59 +05'30'

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this 21<sup>th</sup> day of March, 2023.

Kaushal p.s.