

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 604 of 2021

IN THE MATTER OF:

The Deputy Commissioner of GST

And Central Excise,

Nungambakkam Division, Chennai North
Commissionerate No. 26/1, 5th Floor, Annex Building
Mahatma Gandhi Road,
Cheenai – 600034

...Appellant.

Versus

1. Mr. Vijaykumar V. Iyer

Resolution Professional of

Dishnet Wireless Limited

Deloitte Touche India LLP, Indiabulls Finance Centre
Tower 2, 27th Floor,
Senapati Bapat Marg, Elphinstone Road (West)
Mumbai – 400013

Email : viyer@deloitte.com

...Respondent No. 1

2. UV Asset Reconstruction Company Ltd.

Resolution Applicant

704, Deepali Building

92, Nehru Place

New Delhi – 110019

Email: ceo@uvarcl.com and uvarcl@gmail.com

... Respondent No. 2

For Appellant: Ms. Samiksha Goyal, Advocate
Mr. M. Santhanaraman, Sr. Standing Counsel.

For Respondent: Mr. Vijayant Paliwal, Mr. Charu Bansal,
Ms. Salonee Kulkarni, Ms. Kriti Kalyani,
Advocates for R-1, RP.

With

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...Appellant.

Versus**1. Mr. Vijaykumar V. Iyer****Resolution Professional of****Aircel Cellular Limited**

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For Respondent: Mr. Vijayant Paliwal, Mr. Charu Bansal,
Ms. Salonee Kulkarni, Ms. Kriti Kalyani,
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ORDER
(Virtual Mode)

16.08.2021 Heard Learned Counsel for the Appellant in both these Appeals.

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2. This Appeal has been filed by the Deputy Commissioner of GST and Central Excise against the Impugned Order dated 09th June, 2020 in I.A. No. 1863/MB.II/2019 in CP (IB) No. 302/MB.II/2018 passed by the Ld. Adjudicating Authority (National Company Law Tribunal, Mumbai Bench –II). By the Impugned Order, the Adjudicating Authority approved the Resolution Plan submitted by Respondent No. 2- UV Asset Reconstruction Company Ltd.

3. The Learned Counsel for the Appellant submits that the Appellant had no notice of the Corporate Insolvency Resolution Process (CIRP in short). The

Learned Counsel states that there were earlier pending litigations between the Department of the Appellant and the Corporate Debtor-Dishnet Wireless Ltd. in which orders had already been passed. The Learned Counsel submits that even in records of the Corporate Debtor, there must be records available with regard to the dues payable to the Appellant. The Learned Counsel states that in spite of this when the Resolution Plan was approved no provisions were made to provide for the dues of the Appellant which were operational dues. Learned Counsel submits that if the Impugned Order (Annexure A-1) is seen at Page 49 of the Impugned Order where paragraph 6.7 of the Resolution Plan is referred it can be seen that the Adjudicating Authority accepted the Resolution Plan giving reliefs to the Corporate Debtor with regard to the Action initiated by the Appellant. Reference is made to Clause 9.1.4 of Paragraph 6.7 at Page 92 of the Appeal which reads as under:

Clause	Dispensation	Orders thereon
9.1.4	The central Board of Excise and Customs to not void the transactions contemplated under the Resolution Plan (including a potential sale of Assets) under Section 81 of the Central Goods and Service Tax Act, 2017 and not impose any successor liability on the Resolution Applicant and the Corporate Debtor.	Granted.

4. The Learned Counsel thus submits that Appellant was not before the Adjudicating Authority and although the particulars of dues would be available with the Corporate Debtor, the claims were not provided for in favour of the Appellant and instead Relief was granted against the actions taken by the Appellant.

Company Appeal (AT) (Ins.) No. 605 of 2021

5. This Appeal is arising out of same common Impugned Order dated 09th June, 2020 in which I.A. No. 1865/MB.II/2019 in CP (IB) No. 300/MB.II/2018 was dealt with in the matter of Corporate Debtor-Aircel Cellular Limited. The Learned Counsel for the Appellant submits that by the common Impugned Order, the Adjudicating Authority dealt with Resolution Plans of three companies. The present Appeal is with regard to the Aircel Cellular Limited.

6. The Impugned Order was passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench – II). By the Impugned Order, Adjudicating Authority approved Resolution Plan of the Corporate Debtor-Aircel Cellular Limited.

7. In this matter also, the Learned Counsel for the Appellant points out the concerned Clause 9.1.4 at Page 91 of this Appeal to submit that as in the matter of “Dishnet Wireless Ltd” here also although the Records must be showing the dues of the Appellant but no provision has been made in the Resolution Plan for the dues of the Appellant and that rather Relief has been granted against the actions which were initiated by the Appellant and Orders which have been passed earlier against the Corporate Debtor.

8. Ld. Sr. Standing Counsel-Mr. M. Santhanaraman adds that in both these Appeals in spite of records showing the dues of the Appellant, the Resolution Professional conspired and did not show the dues outstanding and thus both these Appeals need to be entertained. The Learned Counsel for the Appellant add that the Impugned Order which approved the Resolution Plan has been challenged by some other entities and those Appeals are already

pending. It is stated that when the Resolution Professional had drawn the list of claims, dues of the Appellants were shown but were not provided for in the Resolution Plan.

9. Learned Counsel for the Appellant accept that during the pendency of CIRP with regard to both the Corporate Debtors in these Appeals the Department of the Appellant has not filed any Resolution Plan. It is stated that this happened due to Covid-19 situation and by the time, the Appellants in both these Appeals filed claims under IBC for the Operational Dues, the Resolution Plan had already been approved.

10. We have gone through the Appeals and although it is stated that collectively Hundred Crores are involved with regard to both the Appeals, the fact remains that till the Resolution Professional was approved no claim was submitted by the Appellants in both these Appeals. The Impugned Order shows that these were proceedings arising out of Company Petitions of 2018 and thus the excuse of Covid-19 which attracted Lockdown in March, 2020 is not appealing.

11. The Hon'ble Supreme Court in the matter of "Ghanshyam Mishra & Sons Pvt. Ltd. through the authorized signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Directors and Ors." in Civil Appeal No. 8129 of 2019 dated 13th April, 2021 has held in Para 95 as under:

"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 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;

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

12. Keeping in view above observations of Hon’ble Supreme Court of India, we do not find any reason to entertain these Appeals. Even if the Resolution Plan has been challenged in other Appeals by other entities succeeds, fact would still remain that the claims of the Appellants were never filed during CIRPs and thus there was no question of considering the same in the Resolution Plan. As regards the observations made with regard to Clause 9.1.4, with or without the observations, Judgment of Hon’ble Supreme Court is clear and binding. The Department of the Appellant will have to follow Judgment passed by the Hon’ble Supreme Court of India.

13. For such reasons, we decline to admit both these Appeals. The Appeals are disposed, accordingly.

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Mr. V.P. Singh]
Member (Technical)**

Basant B./gc.