



SL.NO.2

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.06.2023 AT 10:30 A.M.**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)/73/9/AMR/2020	Main Case	9 of IBC	Khetulal Pugalia and Sons (HUF) Vs Sri Lakshmi Srinivasa Jute Mills Pvt Ltd
	IA(IBC)/21/2023	U/S 60(5) of the IBC, 2016 r/w Rule 11 of NCLT Rules, 2016	Agrigo Trading Pvt Ltd. Vs. M Madhusudhana Reddy and 2 Ors.

ORDER

IA(IBC)/21/2023:

Mr.Avinash Krishnan Ravi, Counsel for the Applicant present. Mr.M.Madhusudhan Reddy, R1 present in person. Mr.Sankar Varadarajan, Counsel for R2 present. Orders pronounced. IA(IBC)/21/2023 is allowed, vide separate orders.

**Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

RSN



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

*** **

**IA(IBC)/21/2023
IN
CP (IB)/73/9/AMR/2020**

**Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read
with Rule 11 of National Company Law Tribunal Rules, 2016**

AND

**In the matter of
M/s. SRI LAKSHMI SRINIVASA JUTE MILLS PRIVATE LIMITED
(CIN: U17232AP1994PTCO18828)**

Between:

**Agrigo Trading Pvt Ltd. Represented by
No. 20, Mylai Ranganathan Street,
T.Nagar, Chennai – 600 017, Tamil Nadu**

--- Applicant/Successful Resolution Applicant

AND

1. M. Madhusudhana Reddy,
Monitoring Agent of the Corporate Debtor
(erstwhile Resolution Professional)
Sri Lakshmi Srinivasa Jute Mills Pvt Ltd
2. The Dy. Asst. Commissioner (State Tax),
M.G. Road (West) Circle, Vizianagaram
3. The Asst. P F Commissioner / Recovery Officer,
Regional Office, Visakhapatnam

--- Respondents/Respondents

Date of Pronouncement of Orders: 28.06.2023



CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant : Mr.Avinash Krishnan Ravi, Advocate
For Respondent No.1 : Mr. Maligi Madhsudhana Reddy,
Monitoring Agent
For Respondent No.2 : Mr.A.G.Satyanarayana, Advocate
For Respondent No.3 : Dr.B.Manoj Kumar, Advocate

ORDER

Per: Justice Telaprolu Rajani, Member Judicial

1. This is an application filed under Section 60 (5) of IBC, 2016 R/w Rule 11 of NCLT Rules, 2016 by the Applicant/ Successful Resolution Applicant (“SRA”) seeking to pass an order setting aside the order of attachments passed by the Respondent No. 2 & 3 (“R2 & R3”) on the assets of Corporate Debtor (“CD”).
2. The facts briefly, as mentioned in the Application, are as follows:
 - (a) The Resolution Professional (RP) filed an application i.e., IA(BC)/183/2022, seeking to approve the Resolution Plan of the Resolution Applicant/ Applicant herein, which was approved by this Bench vide order dated 01.09.2022.
 - (b) The RP/R1 constituted a Monitoring Committee comprising of himself as one member (and also to act as Chairman of the



Committee), one member nominated by the Successful Resolution Applicant (SRA) and one more member drawn from the Financial Creditors (FC).

- (c) The lands belonging to the CD were attached by R2 & R3 before commencement of CIRP, as a result of which these lands are prevented from being sold, transferred or otherwise alienated by the CD which are as under:

S. No.	Attachment reference No.	Date:
1.	From No. 5, Notice of attachment (Section 27) of AP Revenue Recovery Act, 1864	02-07-2021
2.	JC(ST)/VSM/B4(DMU)/Rc. No. 91/2013	21-08-2021
3.	Form No.5, Notice of attachment (Section 27) of AP Revenue Recovery Act, 1864	18-08-2021
4.	RR-Act-1(Dy.AC(ST)-1 MG Road West VZM/AEO-2	16-03-2021
5.	Rc. No. 226/1996/A4, Asst Commissioner (ST) Rajam	18-12-2019

S. No.	Attachment reference No.	Date:
1.	AP/DO/VZM/4293/Z-61/14B/Recovery/2020	23.06.2020
2.	AP/DO/VZM/4293/Z-61/7A/Recovery/2020	23.06.2020
3.	AP/DO/VZM/4293/Z-61/14B/PD/Recovery/2020	23.06.2020
4.	AP/DO/VZM/4293/Z-61/14B/Recovery/2020	23.06.2020
5.	AP/DO/VZM/4293/Z-61/7A/Recovery/2020	23.06.2020
6.	AP/DO/VZM/4293/2020/1120	14.02.2020
7.	AP/DO/VZM/1924/Z-61/Recovery/2020/1229	20.07.2020
8.	AP/DO/VZM/1924/Z-61/Recovery/2020/1228	20.07.2020
9.	AP/DO/VZM/1924/Z-61/Recovery/2020/1227	20.07.2020
10.	AP/DO/VZM/1924/Z-61/Recovery/2020/1230	20.07.2020



- (d) R2 & R3 submitted their claims in Form B before the RP on 29.03.2022 & 12.05.2022 respectively during the CIRP and the same were admitted by the RP/R1.
- (e) R1 sent a letter to R2 & R3 requesting to pass an Order, lifting the attachments on the assets of the CD.
- (f) R1 has compiled a statement showing distribution of amounts among the stakeholders based on the amounts to be brought in by the Successful Resolution Applicant as per the approved Resolution Plan and intimated to all the claimants of the principle adopted for payment of debt under Resolution the Plan on 13.09.2022, informing them in clear terms, the amount claimed, the amount admitted and the amount proposed to be settled by the Successful Resolution Applicant. As per the approved Resolution Plan, the dues to R2 & R3 were fully paid and settled in compliance with the implementation of a Resolution Plan and there remained no dues by the CD. Letters issued by the RP to R2 & R3 shows the details of the amounts claimed, the amount admitted and the amount provided for in the approved Resolution Plan.
- (g) The liability of the CD for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process (CIRP) **shall cease, and the CD shall not be prosecuted for such an offence from the date the Resolution Plan has been approved by the Adjudicating Authority under section 31 as**



per the provisions of Section 32A of IBC, 2016, the extract of which is given below:

[32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a Corporate Debtor for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process shall cease, and the Corporate Debtor shall not be prosecuted for such an offence from the date the Resolution Plan has been approved by the Adjudicating Authority under section 31, if the Resolution Plan results in the change in the Management or control of the Corporate Debtor to a person who was not-

- (a) A promoter or in the management or control of the corporate debtor or a related party of such a person; or*
- (b) A person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.*

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this subsection having fulfilled:

- (2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the*



provisions of Chapter III of part II of this Code to a person, who was not-

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation: For the purpose of this sub-section, it is hereby clarified that:-

(i) An action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor:

(ii) Nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

- (h) R1 has also forwarded a copy of the order of this Tribunal to R2 & R3 hoping for them to proactively implement the orders by immediately lifting the orders of attachment.
- (i) R2 & R3, after receipt of money in full and final settlement in accordance with approved Resolution Plan kept a blind ear to the pleas of the Resolution Professional / Monitoring Agent to



immediately lift the attachment orders issued earlier. Even though more than two and a half months have elapsed, there is no progress in the withdrawal of the attachment order issued.

- (j) R1/Resolution Professional / Monitoring Agent has the responsibility to handover the CD and its assets free of all encumbrances to the successful applicant. Hence, this application.
3. R1/Erstwhile RP filed counter, accepting the averments made in the application.
4. R2 filed counter, denying the facts mentioned in the application and further stated that:
- (a) After receiving letter from R1 the Deputy Assistant Commissioner (ST), M.G. Road (West) Circle sent mail dated 02.11.2022 to the Government Pleader office of Commercial Taxes requesting a legal opinion in this matter and also sent mail dated 02.11.2022 to R1 informing that the attached properties of the CD which filed insolvency petition before NCLT are to be made free hold properties and the said properties are attached even before filing this CP(IB) /73/9/AMR/2020.
- (b) The company has sold their immovable properties on 12,000 Sq. Yds vide document No: 4405/2020 and 10,000 Sq. Yds. Vide document No. 219/2021 at Cantonment unit Vizianagaram to Pydah Education Academy, Visakhapatnam. But they did not



clear their outstanding dues to the department. Consequent to the attachment in Form-5 under R.R. Act issued on the property of 32331.20 Sq. Yds situated at Cantonment Unit of the Company, the Deputy Assistant Commissioner (ST)-1, Vizianagaram (West) Circle addressed a letter to the Joint Sub-Registrars, West & Dasannapeta, Vizianagaram, to not alienate / transfer/ register the said property. Aggrieved by the above said letter, M/s. Pydah Educational Academy, Visakhapanam has filed the Writ Petition No. 22983 of 2022 before Hon'ble High Court, Andhra Pradesh and the same is still pending.

- (c) The Assistant Commissioner (ST), Rajam received demand draft for an amount of Rs:78,04,413/- which is 1% of the amount claimed in the petition. Moreover, deferment tax is nothing but loan extended. It is an interest free loan provided by the Government of AP., i.e., R2 designated as Joint Commissioner (State Taxes) and the CTO Respondent-designated as Assistant Commissioner (State Taxes) are the Financial Creditors on behalf of Government of Andhra Pradesh. The CD had collected the Taxes from his customers from 1996 onwards and utilized for the industry development purpose. Other way it is an interest free loan provided by the Government of A.P. The Corporate Debtor had breached the contract which tantamounts to failure of promissory estoppel. The Financial Creditor has every right to collect his dues from the CD.



- (d) The Respondent had treated interest free loan as Government Dues. The provisions of the A.P. General Sales Tax Act, 1957 can be read as under:

***SECTION 16-B.** Liability of directors of private company in liquidation: When any private company is wound up and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax, unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.*

***SECTION 16-C.** Liability under this act to be the first charge: Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of dealer, or such person.*

- (e) Section 16-C of the APGST Act provides first charge over the assets of the defaulter. CD is a defaulter on non-repayment of interest free loan provided by the Government. This is non-obstacle clause providing first charge over all other liabilities. The CD entered into agreement with the Deputy Commissioner of Commercial Taxes, Vizianagaram Division for availing the interest free loan and agreed to take recovery under section 16-C of the AP General Sales Tax Act' 1957.
- (f) R2 relied upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 1661 of 2020 with Civil Appeal No. 2568 of 2020 which held as under:



“Para 52. If the resolution plan ignores the statutory demands payable to any state government or a legal authority, altogether, the adjudicating authority is bound to reject the resolution plan.

53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in section 53 of the IBC.

54. In our considered view, the committee of creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any government or governmental authority or for that matter, any other dues.

55. In our considered view, the NCLAT clearly erred in its observation that section 53 of the IBC over-rides section 48 of the GVAT Act. Section 53 of the IBC begins with a non-obstante clause which reads:-

“Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority...”

56. Section 48 of the GVAT Act is not contrary to or inconsistent with section 53 or any other provisions of the IBC. Under section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the state under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, the state is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in



the IBC does not exclude any Government or Governmental Authority.

58. We are constrained to hold that the Appellate Authority (NCLAT) and the Adjudicating Authority erred in law rejecting the application / appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim.”

(g) The Government of A.P. issued G.O. M.S. No. 187, Industries & Commerce (IP) Department, dated: 21-11-1995 directed as under:

- a. The amounts of sales tax due and deferred under the interest free sales tax deferral scheme will be treated as deemed to have been paid an identical amount treated as Government loan extended to the assessee subject the condition that an agreement shall be executed by the assessee to the effect that the amount deemed to have been paid will be treat as an interest free loan repayable to the Government by the assessee in specified instalments as prescribed in the Government Order sanctioning the deferral scheme.
- b. The Commercial Tax Department be the agency for entering into loan agreement in the form to be prescribed by the government and maintenance of account and collections of loan instalments when they fall due. The Commissioner of Commercial Tax is directed to notify the Officer in the Commercial Tax Department competent to execute loan agreement on behalf of the Government.

The order shall take effect retrospectively from 01-04-1984 i.e., the date of introduction of Section 43-B of Income Tax Act, 1961, by the Finance Act, 1983.

(h) In the light of the directions issued by the Government of A.P., the Commissioner of Commercial Taxes notified the Deputy Commissioner (CT) of the respective Division as competent to



execute the loan agreement vide Commissioner of Commercial Taxes Circular in CCT's Ref.All(3)/21291995, dated: 20-12-1995.

- (i) The Company, in the 'Deed of Agreement' for Demand Payment of Deferred Sales Tax' dated: 14-07-2009 made with the Department is here with reproduced.

"Para-5. The party of the second part shall not alienate/dispose/encumber/lease out the said fixed assets until the Government loan is fully repaid nor shall it remove the fixed assets from the Units premises without the express prior permission from the party of the first part who in turn shall obtain appropriate orders from the Government for the same.

The party of the second part hereby confirms that the loan receivables shall have a prior charge as per clause 16-C of the A.P. General Sales Tax Act.

"Para – 8 of page 9 of the agreement read as under:

In case of default of any of the conditions mentioned in clauses 2,3,4,5&6 above, the deferral thus granted shall be cancelled for the entire period for which the same was granted.

In default of repayment of Government loan or cancellation of the deferral facility for violation of any of the conditions as mentioned in clauses 2,3,4,5&6 such Government loan, Tax and Interest due thereon, shall be recoverable in such



manner as specified under A.P. Revenue Recovery Act for the loan and Section 17 of the A.P. General Sales Tax Act' 1957 for the Tax, and the amount is also liable for 21.5% interest per annum.

“Para – 4 of page 7 of the agreement read as under:

In case of default in payment of Government loan, the party of the second part Undertakes that:

- a) In the case of partnership firm, the movable and immovable properties of the partners.
 - b) In the case of the proprietary concern, the movable and immovable properties of the proprietor.
- (j) In case of Limited and Unlimited Companies, the movable and immovable properties of the company and/or their Chairman and Managing Director and Directors (excluding Nominee Director(s) and Independent Director (s) shall be attached/proceeded towards the realization of outstanding Government loan under Revenue Recovery Act together with interest at 21.5% P.A. (compound interest) calculated from the due date for repayment of loan. The term movable shall include cash/shares/debentures/bank balance etc.
- (k) Filing of insolvency petition before the National Company Law Tribunal cannot absolve the defaulter-dealers from payment of arrears of deferred sales tax, which was collected from the customers at the time of sale of goods. It is nothing but the



defaulter dealers have premediated to avoid payment of the tax to the Government that was collected from the customers by filing insolvency petition. The burden of payment of deferred tax once collected from the customers cannot be deprived of by simply filing insolvency petition.

- (l) The dealers have collected the full amount of deferred tax from the customers while affecting sales of manufactured goods but retained the same with them and not paid the same to the Government. The Hon'ble High Court of Amaravati has been pleased to allow the defaulter-dealers to pay the total amount of tax by way of instalments, the defaulter-dealers have not honoured the proceedings of the Hon'ble High Court. Hence, this application is liable to be dismissed.
5. R3 filed counter contending that the averments made in the application are false and further stated that:
- (a) Prior to the above C.P. proceedings, the CD company has defaulted in payment of the contributions and administrative charges payable under Employees' provident Funds Scheme, 1952, Employees' Pension Scheme, 1995 and the Employees' Deposit-Linked Insurance Scheme, 1976 to R3. The resolution plan presented by R1 has been unfair, without mentioning reasons for on what basis the claim of R3 was unlawfully restricted to 20% of the total. The poor workers of the establishments of the Corporate Debtor stand to lose heavily as



their legitimate dues are denied. Having left with no other option, R3 approached the NCLAT, Chennai and filed an appeal against the orders of this Bench.

- (b) In spite of having submitted the requisite forms/ claim well within time, the resolution plan did not take the welfare of the poor workers who had toiled and earned the amounts towards their 'Provident fund' which would help them time over the years. The resolution professional had turned a blind eye to the welfare of the workers.
- (c) The CD failed to comply with statutory provisions. Prior to the CIRP, R3 would have ensured that the auction of the attached properties brought in the requisite amounts, payable as dues to the Respondent number 3, across the various units. Out of the claim submitted by R3, only 20% was allowed and no reason was submitted for unlawfully curtailing the claim.
- (d) R3 received a letter but they did not agree with the unfair resolution plan and approached the NCLAT praying for justice. R3 is not in a position of lifting the attachments, as it is bound to the members, to ensure that the statutory provision is implemented. As such, R3 has addressed letters to the concerned registrars with the requests not to allow any registrations on the attached properties. The referred plan has been unfair and keeps in view the social security of the workers who had toiled and earned their provident fund which was left unpaid by the



establishments. R3, takes upon the responsibility of safeguarding the hard-earned dues on behalf of the workers of the establishments/corporate Debtor.

- (e) The action of the CD and the resolution professional shows that the workers who have toiled and earned their social security are refused their rights blindly. Vide the letter cited, no reasons were communicated by R1 regarding the rationale adopted in the process of curtailing the amounts to 20% of the dues raised and no justification to the method implemented in such restriction was stated. The amount/contribution pertaining to each and every worker is credited to their individual account. The amounts of PF contribution cannot be amicably settled. The CD or R3 do not have the right to restrict an amount that has become due at a different time in the past.

- (f) The action prior to the resolution plan cannot be tried as a crime or injustice. R3 cannot be forced to release the attachments made prior to the process of the CIRP and also in view of the appeal filed before the NCLAT, Chennai. R3 has no interest in the attached property other, than to ensure justice to the workers that is ensuring compliance of an approved legislation of statutory nature. Hence, R3 requests this Bench not to issue any orders against the attachments made by R3 since the appeal is pending before the NCLAT. In view of the above reasons, the Application is liable to be dismissed.



6. Heard the arguments of all the counsel and perused the written submissions filed by the Applicant, R2 & R3 which are almost reiteration of the contents of the pleadings.
7. R2 & R3 admittedly attached the properties of the CD in order to realise the amounts due to them. It is with a prayer to lift the said attachment that the applicant is before this Tribunal. It is not a disputed fact that the claims were submitted by R2 & R3 and the same were admitted in accordance with Section 53. The counsel for the Applicant relies on the judgements of the NCLAT in *Haryana State Industrial and Infrastructure Development Corporation Ltd vs. AAR AAR Technoplast Private Limited*, wherein it was observed that having regard to the fact that the appellant therein has already submitted his claim in Form B as an Operational Creditor when the CD company was in liquidation and the liquidator has already distributed the proceeds as per Section 53 of the Code, the contention of the Learned Counsel for the Appellant that the dues raised prior to the Auction are liable to be paid by the Auction Purchaser, has to be examined on the touchstone of the ratio of the *Hon'ble Apex Court in the Judgement of 'Committee of Creditors Essar Steels Standard Chartered Bank' Vs. 'Satish Kumar Gupta', 2019 SCC OnLine 388*, in which it was held as follows:

"107. For the same reason, the impugned NCLAT judgement [Standard Chartered Bank Vs. Satish Kumar Gupta, 2019 SCC OnLine 388] in holding that 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" all claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which 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 application 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 not on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgement must also be set aside on this count."

8. The NCLAT also referred to the judgment of the Supreme Court in ***Ghanshyam Mishra and Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Limited' (2021) SCC OnLine 313***, wherein it was held under:

"61. All these details are required to be contained in the information memorandum so that the resolution Comp. App. (AT) (Ins.) No. 606 of 2021 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."



9. The judgement rendered by the NCLT, Mumbai in the matter of *Amit Gupta vs. Anil Kohli in MANU/NC/5451/2022*, also considered the case of *Ghanshyam Mishra and Sons Private Limited V/s Edelweiss Asset Reconstruction Company Limited* and also the case of *Jaypee Kensington Boulevard Apartments Welfare Association and Others V/s NBCC (India) Limited* and other landmark decisions of the Hon'ble Supreme Court of India and held that it is a settled law that all the liability of the CD which is prior to the CIRP and prior to approval of the Resolution Plan and before transfer of the assets of the CD to the Resolution Applicant shall stand extinguished. It is also stated that the Successful Resolution Applicant is eligible to have encumbrance free transfer of the assets of the CD after the approval of the Resolution Plan. It further held that the Applicant can approach the statutory authorities on the strength of the Hon'ble Supreme Court ruling and can get lifted the attachment and the prohibitory orders passed creating encumbrances on the assets of the CD to be removed.
10. The judgment of the Hight Court of Delhi in *W.P.(C) No. 3119/2021* between *Sree Metaliks Ltd. Vs. Additional Director General*, which was relied upon by the counsel for the Applicant also referred to the judgment of the Hon'ble Supreme Court in *Ghanshyam Mishra and Sons Private Limited V/s Edelweiss Asset Reconstruction Company Limited* and observed that with regard to the question whether the claims reflected in the Resolution Plan as approved under Section 31 of the Code would stand frozen and thus bind all the stakeholders and whether the statutory dues, owed to the central government, state government or local authority, which did not form part of the



approved Resolution Plan would stand extinguished, and thereby disable the continuation of any proceedings qua claims which concerned the period arising prior to the approval of the Resolution Plan by the Adjudicating Authority under Section 31 of the Code, it was held 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 [the] resolution plan by the adjudicating authority, all such claims, which are not a part of [the] 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.

102.2. The 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 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."

Hence, the above position of law would make it clear that the statutory dues to R2 & R3 which are prior to the CIRP period and prior to the approval of the Resolution Plan would stand extinguished,



much less when they have already submitted their claims before the RP and when the claims are admitted in accordance with Section 53 of the Code. The contention that they have to be categorised as Secured Financial Creditor does not survive since their claims were accepted as Operational Creditor and the same were not questioned by them. The appeal before the NCLAT does not have any bearing on this case. Hence, in view of the above, the application is allowed and set aside the orders of attachments passed by R2 & R3 on the assets of the CD. Accordingly, IA(IBC)/21/2023 is disposed of.

Sd/- Dated 28.06.2023

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu