IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 9420 OF 2022

1. Uttam Value Steels Ltd.
2. Mr. Subodh Karmarkar ...**Petitioners**

Versus

1. Assistant Commissioner of Income Tax
2. Deputy Commissioner of Income Tax
3. Union of India ...**Respondents**

Mr. Vikram Deshmukh, *a/w Siddhi Doshi, i/b ALMT Legal, Advocates for the Petitioners.*

Mr. Suresh Kumar, *Advocate for Respondents.*

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE : AUGUST 28, 2024

ORAL JUDGEMENT: (*Per, Somasekhar Sundaresan J.*)

1. Rule. Respondents waive service. Rule is made returnable forthwith with the consent of the parties, taken up for final hearing and disposal.

Impugned Proceedings:

2. This Petition challenges multiple identified notices and

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communications in connection with proceedings ("***Impugned Proceedings***") under the Income-tax Act, 1961 ("***the Act***") issued by the Revenue to the Uttam Value Steels Ltd. ("***Petitioner-Assessee***"), a company that has been successfully resolved under a Corporate Insolvency Resolution Process ("***CIRP***") under the Insolvency and Bankruptcy Code, 2016 ("***IBC***").

3. Essentially, the Impugned Proceedings entailed issuance of notices under:

i) Section 153C (*Assessment of income of any other person*);

ii) Section 143 (2) (*Assessment*);

iii) Section 142(1) (*Inquiry before assessment*); and

iv) Section 133(6) (*Power to call for information*)

Resolution of the Petitioner-Assessee:

4. The Petitioner-Assessee was admitted into a CIRP by an order dated June 26, 2018 passed by the National Company Law Tribunal, New Delhi ("***NCLT***"). Various processes under the IBC were

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undertaken. Eventually, the company came to be resolved pursuant to a resolution plan finalized by the Committee of Creditors, and approved by the NCLT under Section 31 of the IBC by an order dated May 6, 2020[1]. The resolution plan, as approved by the NCLT, entails a full waiver of all tax and tax-related interest dues pertaining to the period prior to commencement of the CIRP.

5. Evidently prior to the commencement of the CIRP, on April 17, 2018, the Revenue had carried out search and seizure action under Section 132 of the Act against the Vinod Jatia group and it was alleged by the Revenue that certain companies belonging to the Vinod Jatia group had engaged in bogus transactions and had made bogus entries in their books of accounts. Such companies are said to have entered into transactions with the Petitioner-Assessee too.

6. On March 15, 2021 i.e., well after the approval of the resolution plan, the Revenue wrote to the Petitioner-Assessee initiating proceedings under Section 153C of the Act in respect to Assessment Year 2013-14 to 2018-19. Thereafter, the Revenue also issued notices under Section 143(2) and 142(1) of the Act for Assessment Year 2019-20. The

[1] *The record shows that this order was pronounced on April 30, 2020, but delivered on May 6, 2020.*

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Petitioner-Assessee was also issued multiple summons under Section 133(6) (*Power to call for information*) of the Act.

7. On January 4, 2022 the Petitioner-Assessee made a detailed representation objecting to the initiation of such proceedings on the ground that the resolution plan having been approved on May 6, 2020, all past claims pertaining to the Petitioner-Assessee including claims raised by the Revenue, stood extinguished. It was also contended that the Revenue could not initiate fresh proceedings for past claims pertaining to the period prior to the initiation of CIRP. In a nutshell, the Petitioner-Assessee sought that such proceedings be dropped.

8. On February 17, 2022 the Revenue wrote to the Petitioner-Assessee contending that the submissions of the Petitioner-Assessee do not find any support from any legal provision. After its failure to convince the Revenue, the Petitioner-Assessee has invoked the writ jurisdiction under Article 226 of the Constitution of India praying for quashing and setting aside of the Impugned Proceedings including all the notices and communications received from the Revenue on the ground that Section 31 of the IBC explicitly makes the resolution plan binding on the Revenue. The Petitioner-Assessee has also submitted

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that the law declared by the Supreme Court, interpreting Section 31 of the IBC fully covered the position that the Petitioner-Assessee is in, and that a corporate debtor after being resolved, starts with a clean slate and cannot be pursued for past tax claims.

Revenue's Defence of Impugned Proceedings:

9. The Revenue has filed an affidavit in reply dated June 21, 2022 ("***Reply Affidavit***") opposing the petition. The Reply Affidavit essentially sets out the various actions initiated against the Vinod Jatia group and the alleged tax violations indulged in by that group. The Revenue has asserted that the submissions of the Petitioner-Assessee do not find support from any legal provision. The Reply Affidavit admits that tax demands that relate to past claims would indeed stand waived, but insinuates that the Revenue's pursuit of proceedings does not relate to past claims and is consequently, legitimate. Yet, the Reply Affidavit indeed confirms that the search and seizure proceedings were initiated prior to commencement of CIRP. The Reply Affidavit does not explain how the Impugned Proceedings relate to liabilities emerging after the CIRP. The implicit contention of the Revenue is that tax liabilities that are crystallized after the commencement of the CIRP would not be past tax claims and would constitute future liability because these liabilities

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did not exist in a crystallized form prior to the CIRP, and therefore such liabilities would not stand resolved by the resolution plan.

10. On March 28, 2022, a Division Bench of this Court, on a *prima facie* examination of the matter granted *ad interim* relief by restraining the Revenue from taking any further steps, whether coercive or otherwise in relation to the Impugned Proceedings. Such interim relief has continued till date.

Section 31(1) of IBC and its import:

11. At the outset, it would be necessary to extract the provisions of Section 31(1) of the IBC, since it makes the terms of resolution of corporate debtors binding on the world at large. They are extracted below:

> *"31. (1) **If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors** under sub-section (4) of section 30 **meets the requirements** as referred to in sub-section (2) of section 30, **it shall by order approve the resolution plan which 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."*
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> ***[Emphasis Supplied]***

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12. Even a plain reading of the foregoing would show that once the Adjudicating Authority (the NCLT) approves the resolution plan, it would be binding on, among others, the Central Government and its agencies in respect of payment of any statutory dues arising under any law for the time being in force. It is now trite law that the effect of resolution of a corporate debtor is that the terms of resolution bind tax authorities and their enforcement actions – a position in law declared in numerous judgments of the Supreme Court. While it is not necessary to extract from a long line of decisions of the Supreme Court to note the effect of approval of the resolution plan under Section 31 of the IBC, as rightly pleaded by the Petitioner-Assessee the judgment in *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*[2] (***Ghanshyam Mishra***) comprehensively summaries the import of various judgments on the point. The following extracts from ***Ghanshyam Mishra*** are noteworthy:

> ***64.*** *It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by adjudicating authority is limited to the extent provided under Section 31 of the I&B Code and of the appellate authority is limited to the extent provided under sub-section (3) of Section 61 of the I&B Code, is no more res integra.*
>
> ***65.*** ***Bare reading of Section 31 of the I&B Code would also make it***

[2] *(2021) 9 SCC 657*

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abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern.

67. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal that it requires RP to prepare an information memorandum containing various details of the corporate debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the corporate debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them are required to be contained in the information memorandum.

68. 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 Supplied]

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13. ***Ghanshyam Mishra*** went on to deal with amendments made to Section 31 of the IBC to include within its ambit dues owed to the Central Government and its agencies, in the following words:

> *84. It is clear that the mischief which was noticed prior to amendment of Section 31 of the I&B Code was that though the legislative intent was to extinguish all such debts owed to the Central Government, any State 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.*
>
> *94. We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation.*
>
> *95. There is another reason which persuades us to take the said view. Clause (10) of Section 3 of the I&B Code defines "creditor" thus:*
>
> *"3. (10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;"*

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96. Clauses (20) and (21) of Section 5 of the I&B Code define "operational creditor" and "operational debt" respectively as such:

"5. (20)"operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21)"operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

97. "Creditor" therefore has been defined to mean "any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder". "Operational creditor" has been defined to mean a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. "Operational debt" has been defined to mean a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

98. It is a cardinal principle of law that a statute has to be read as a whole. Harmonious construction of clause (10) of Section 3 of the I&B Code read with clauses (20) and (21) of Section 5 thereof would reveal that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority would come within the ambit of "operational debt". The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of "operational creditor" as defined under clause (20) of Section 5 of the I&B Code. Consequently, a person to whom a debt is owed would be covered by the definition of "creditor" as defined under clause (10) of Section 3 of the I&B Code. As such, even without the 2019 Amendment, the Central Government, any State Government or any local authority to

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whom a debt is owed, including the statutory dues, would be covered by the term "creditor" and in any case, by the term "other stakeholders" as provided in sub- section (1) of Section 31 of the I&B Code.

[Emphasis Supplied]

14. In conclusion, to put matters beyond a pale of doubt, the Supreme Court declared as follows:

Conclusion

102. In the result, we answer the questions framed by us 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 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.***

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****.*

[Emphasis Supplied]

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15. It is therefore crystal clear that once a resolution plan is duly approved under Section 31(1) of the IBC, the debts as provided for in the resolution plan alone shall remain payable and such position shall be binding on, among others, the Central Government and various authorities, including tax authorities. All dues which are not part of the resolution plan would stand extinguished and no person would be entitled to initiate or continue any proceedings in respect of any claim for any such due. No proceedings in respect of any dues relating to the period prior to the approval of the resolution plan can be continued or initiated.

16. In this clear view of the matter, there can be no manner of doubt that the Impugned Proceedings initiated by the Revenue and sought to be defended as if they relate to liabilities that somehow emerge after the CIRP, are wholly misconceived and untenable. The resolution plan, upon its approval, brought a *quietus* to all claims pursued or capable of being pursued by the Revenue against the Petitioner-Assessee for any operation prior to the CIRP. The stance of the Revenue in the Reply Affidavit, namely, that if the tax claim amount had not been crystallised, would be future dues and not past dues, is totally untenable. ***Ghanshyam Mishra*** makes it clear that the

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continuation of existing proceedings and the initiation of new proceedings, as they relate to operations prior to the CIRP, are totally prohibited after the approval of the resolution plan. Consequently, nothing would survive insofar as the Impugned Proceedings relate to the Petitioner-Assessee.

17. We may mention that a co-ordinate bench of this Court has followed and applied ***Ghanashyam Mishra*** in at least two judgments, to rule that proceedings initiated by the Revenue in respect of tax for a period prior to the CIRP, cannot be continued. In *Alok Industries Ltd. v. Assistant Commissioner of Income-tax*[3], a Division Bench of this Court held in favour of the Assessee quashing various proceedings for reassessment initiated against a corporate debtor that had undergone a resolution under the IBC. So also, in *AMNS Khopoli Limited v. Assistant Commissioner of Income Tax and Others*[4] (***AMNS Khopoli***) the reassessment proceedings initiated in the facts of that case were quashed and set aside by a Division Bench of this Court. In particular, Paragraphs 15 and 16 of ***AMNS Khopoli*** are noteworthy and are extracted below:-

[3] *[2024] 161 taxmann.com 285(Bombay)*
[4] *2024 SCC OnLine Bom 1213*

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15. In the circumstances, since the Resolution Plan expressively provides that no person shall be entitled to initiate any proceedings or inquiry, assessment, enforce any claim or continue any proceedings in relation to claims so long such result to a period prior to the Effective Date of the Resolution Plan, i.e., 10th November 2022 impugned notices are bad in law.

Further, the impugned notices are bad in law also because respondents failed to take into account that after approval of the Resolution Plan by the NCLT, a creditor including the Central Government, State Government or local authority is not entitled to initiate proceedings on the Resolution Applicant, in relation to claims which are not part of the Resolution Plan approved by the NCLT.

Pertinently, respondents had not submitted any claims to the IRP, as required under the Code, despite the public announcement being issued by the IRP, as prescribed under the Code.

16. The impugned notice issued under Section 143(2) of the Act by Respondent No. 1 and the consequential impugned notices issued under Section 142(1) of the Act by Respondent No. 2 and all subsequent communications issued by Respondent No. 2 pursuant to the aforementioned impugned notices are bad in law since assessment and inquiry under the Act is sought to be initiated in gross violation of provisions of the Code in as much as it relates to a period prior to the Effective Date.

[Emphasis Supplied]

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Conclusion:

18. The aforesaid position in law squarely applies to the facts of the instant case, and necessitates quashing the Impugned Proceedings. Evidently and admittedly, the tax proceedings against the Vinod Jatia Group pre-date the CIRP and no matter when the liabilities are purported to get crystallised, even if they are allowed to get crystallised, they would relate to the period prior to the approval of the resolution plan of the Petitioner-Assessee, and therefore stand extinguished. This is why the Supreme Court has clearly ruled that initiation and continuation of proceedings relating to the period prior to the approval of the resolution plan cannot be indulged in. Upon completion of the CIRP, the Petitioner-Assessee has completely changed hands and has begun on a clean slate under new ownership and management.

19. Consequently, all the notices and communications issued by the Revenue in connection with the Impugned Proceedings, and the consequential actions as impugned in this Writ Petition are hereby quashed and set aside in terms of prayer clauses (a), which, for felicity, is extracted below:-

> *(a) That this Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of*

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Mandamus under Article 226 of the Constitution of India directing the Respondents to forthwith cancel and withdraw the six notices all dated 30th March 2021 issued by Respondent No.1 to the Petitioner under Section 153C of the Income Tax Act for AY 2013-2014 to AY 2018-2019 and the three notices dated (i) 16th January 2021 under Section 133(6) of the Act, (ii) 30th March 2021 under Section 143(2) of the Act and (iii) 18th January 2022 under Section 142(1) of the Act issued by the Respondent No.1 for AY 2019-2020 as well as for closing of all proceedings against the Petitioner No.1;

20. Rule is made absolute in the aforesaid terms and the writ petition is ***disposed of*** accordingly.

21. Needless to say, any pending interim application taken out in the writ petition, too would stand disposed of. No costs.

[SOMASEKHAR SUNDARESAN, J.] **[G. S. KULKARNI, J.]**

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