

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 68 of 2022

In the matter of:

Ruchi Soya Industries Ltd.

....Appellant

Vs.

**Joint Commissioner of Labour And Class
Cess Assessment Officer, Zone-II,
Eluru & Anr.**

....Respondents

Present

**For Appellant: Mr. Jayant K Mehta, Sr. Advocate along with
Mr. Simranjeet Singh, Mr. Kunal Vaishnav, Ms. Amrita
Grover & Ms. Smiti Verma.**

For Respondents: Mr. T. Kanaka Raju, for R-2.

With

Company Appeal (AT) (Ins.) No. 69 of 2022

In the matter of:

Ruchi Soya Industries Ltd.

....Appellant

Vs.

Principal Commissioner of Customs & Anr.

....Respondents

Present

**For Appellant: Mr. Jayant K Mehta, Sr. Advocate along with
Mr. Simranjeet Singh, Mr. Kunal Vaishnav, Ms. Amrita
Grover & Ms. Smiti Verma.**

For Respondents: Mr. Satish Kumar, for R-2.

With

Company Appeal (AT) (Ins.) No. 70 of 2022

In the matter of:

Ruchi Soya Industries Ltd.

....Appellant

Vs.

The Collector, Alibaug & Ors.

....Respondents

Present

**For Appellant: Mr. Jayant K Mehta, Sr. Advocate along with
Mr. Simranjeet Singh, Mr. Kunal Vaishnav, Ms. Amrita
Grover & Ms. Smiti Verma.**

For Respondents: None.

With

Company Appeal (AT) (Ins.) No. 71 of 2022

In the matter of:

Ruchi Soya Industries Ltd.

....Appellant

Vs.

**Commissioner, Central Goods and
Service Tax & Central Excise, Kutch
(Gandhidham)**

....Respondent

Present

**For Appellant: Mr. Jayant K Mehta, Sr. Advocate along with
Mr. Simranjeet Singh, Mr. Kunal Vaishnav, Ms. Amrita
Grover & Ms. Smiti Verma.**

For Respondent: Mr. Vijay Joshi, Advocate.

J U D G M E N T
(03rd June, 2022)

Ashok Bhushan, J.

1. These Appeals have been filed by the same Appellant challenging the common order dated 03.12.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Court-I, Mumbai Bench, in IA Nos.111/2021, 1418/2021, 2562/2021 and 2577/2021 filed by the Successful Resolution Applicant (SRA). Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor- 'Ruchi Soya Industries Limited' by order dated 08.12.2017. The facts and issues in all these Appeals are similar, however, we need to notice few facts in each Appeals separately.

2. In **Company Appeal (AT) (Ins.) No. 68 of 2022**, a notice dated 24.05.2018 was issued by the Respondent No.1- Joint Commissioner of Labour and Cess Assessment Officer *inter alia* stating that the Appellant had undertaken construction work for an estimated cost of construction of Rs.77,30,030/- and failed to pay the 1% cess on the same. In response to the above, the Appellant sent a demand draft of Rs.77,300/-. In the CIRP, Resolution Plan was submitted by 'Patanjali Consortium' which was approved by the Adjudicating Authority vide its order dated 24.07.2019 / 04.09.2019. Letter dated 26.08.2020 was received from Respondent No.1 claiming that a sum of Rs.76,52,730/- was outstanding which was asked to be paid within

seven days. A show-cause notice dated 01.06.2021 was issued by the Respondent No.1 stating that the Appellant had failed to pay the cess amount of Rs.76,52,730/-. Application being I.A 1418 of 2021 was filed by the Appellant before the Adjudicating Authority challenging the illegal notice sent by the Respondent No.1 which I.A was disposed of by impugned order dated 03.12.2021 observing that the Corporate Debtor has now been taken by Patanjali Consortium, hence, after the approval of the Resolution Plan, these matters be dealt with Monitoring Committee. The Applicant was directed to take up the matter with the Monitoring Committee after the approval of the Resolution Plan. Aggrieved by the said order, this Appeal has been filed.

3. In Company Appeal (AT) (Ins.) No. 69 of 2022, the order passed by the Adjudicating Authority dated 03.12.2021 in I.A 2562/2021 has been challenged. I.A No. 2562/2021 was filed by the Appellant for setting aside the order dated 27.08.2020 passed by the Commissioner of Customs. In the I.A, it was clear that the claim amounts relate to period 01.01.2013 to 31.03.2015 with regard to which no claim was filed in the CIRP. In the Interim Application, it was prayed that as no claim has been filed, all claims prior to CIRP Commencement Date shall stand extinguished. The Application was disposed of by common order dated 03.12.2021.

4. In Company Appeal (AT) (Ins.) No. 70 of 2022, order dated 03.12.2021 rejecting I.A No.111/2021 has been challenged. By I.A No. 111/2021, the Appellant has prayed for quashing the notices/ report issued

by the Respondent under the Maharashtra Tenancy and Agricultural Land Act, 1948. In the I.A, the Appellant has claimed that the notices and letters have been issued on 28.02.2019 and 11.12.2019 respectively. During the Moratorium period, the Talathi has conducted a survey of the land and prepared a report on 28.02.2019. Allegation is that the Appellant has breached the provisions of Maharashtra Tenancy and Agricultural Land Act, 1948. By the Application, the Appellant has prayed for quashing the notices and reports.

5. In **Company Appeal (AT) (Ins.) No. 71 of 2022**, challenge is to the order dated 03.12.2021 passed in I.A No. 2577/2021. I.A was filed with respect to the order dated 30.07.2020 by which amount of Rs.3,69,62,268/- is sought to be recovered which was alleged to have been re-credit wrongly taken by the Appellant under the provisions of Notification dated 31.07.2001 read with Section 11A of the Central Excise Act, 1944. The Application was disposed of by common order dated 03.12.2021.

6. We have heard Shri Jayant K Mehta, Sr. Advocate and Shri Kunal Vaishnav, Learned Counsel for the Appellant. Shri T. Kanaka Raju, Regional Vigilance and Enforcement Officer, Vjaywada has appeared in person for Respondent in Company Appeal (AT) No. 68 of 2022. We have also heard Shri Satish Kumar, Learned Counsel for the Respondents in Company Appeal (AT) (Ins.) No.69 of 2022 and Shri Vijay Joshi, Learned Counsel for the Respondents in Company Appeal (AT) (Ins.) No.71 of 2022. In Company

Appeal (AT) (Ins.) No.70 of 2022, no one has appeared for the Respondents despite service.

7. Learned Counsel for the Appellant submits that after approval of the Resolution Plan, all claims of Operational Creditors and other claimants including statutory authorities stood extinguished. By IAs filed before the Adjudicating Authority, the Appellant has challenged the notices and demands issued by the Respondents with regard to dues prior to Insolvency Commencement Date which do not survive after approval of the Resolution Plan. The Adjudicating Authority ought to have allowed the IAs filed before it since no demand or recovery could have been pressed against the Corporate Debtor for pre-Corporate Insolvency Resolution Process dues. Learned Counsel for the Appellant has placed reliance on judgment of the Hon'ble Supreme Court in ***"Ghanshyam Mishra & Ors. vs. Edelweiss Asset Reconstruction Company- Civil Appeal No. 8129 of 2019"*** and the judgment of the Hon'ble Supreme Court dated 17.02.2022 in the matter of the Corporate Debtor itself namely— ***"Ruchi Soya Industries Ltd. vs. Union of India- Civil Appeal No. 447-448 of 2013"***.

8. Shri T. Kanaka Raju, Respondent No.2 appearing in Company Appeal (AT) No. 68 of 2022 submits that a report dated 12.03.2018 was submitted about the non-payment of Labour Cess @1% against the Corporate Debtor. 1% Labour Cess to construction cost of Rs.77,30,03,000/- estimated, out of which only Rs. 77,300/- was paid by the Corporate Debtor. Notice dated

24.05.2018 was issued by the Commissioner of Labour regarding 1% Cess on estimated cost of construction. Subsequently, show-cause notices were also issued by the Joint Labour Commissioner demanding labour cess of 76,52,730/- besides interest.

9. Shri Satish Kumar, Learned Senior Standing Counsel appearing for the Respondent in Company Appeal (AT) (Ins.) No.69 of 2022 refers to an order dated 27.08.2020 by which demand of Rs.1,77,23,493/- has been confirmed. Apart from the imposition of penalty under the Custom Act, 1962, it is submitted that show-cause notice was issued on 22.02.2019 which ultimately resulted in the order dated 27.08.2020. It is submitted that the Appellant has misclassified their products and wrongly availed the benefit of export incentive which was inadmissible to them. Corporate Debtor is liable to pay the said amount.

10. Shri Vijay Joshi, Learned Counsel appearing for the Respondent in Company Appeal (AT) (Ins.) No. 71 of 2022 submits that the show-cause notice dated 22.01.2016 was issued for demand of Rs.3,69,62,268/-by the Commissioner of Central Excise, Gandhidham which was prior to initiation of CIRP. The said demand was subsequently confirmed. It is submitted that the Respondent could not know about the initiation of CIRP and no information was sent by the IRP to the Respondent.

11. We have considered the submissions of the Learned Counsel for the parties and have perused the record.

12. Company Appeal (AT) (Ins.) Nos. 68, 69 and 71 of 2022 contain similar issue of facts and law. We first need to notice the prayers which was sought by the Appellant before the Adjudicating Authority in I.A 1418 of 2021 (Company Appeal (AT) (Ins.) Nos. 68 of 2022). The Appellant has prayed for quashing of the orders dated 26.08.2020, 10.11.2020 and 20.03.2021/ or any other letter/ notice relating to the alleged cess payable for the construction of Oil Palm Division in Ampapuram Village, Bapulapadu Mandal, Krishna. The challenge in the Application was labour cess which was demanded by the Respondent. By order dated 26.08.2020 amount of Rs.76,52,730/- as labour cess was demanded. In the Rejoinder, it has been brought on record that the aforesaid cess relate to period 2009 to 2010.

13. Similarly in I.A 2562/ 2021 (Company Appeal (AT) (Ins.) Nos. 69 of 2022), the prayer was made to quash and set aside the order dated 27.08.2020 by which demand was raised as noted above. The aforesaid demand, as noted above, was for the period 2013 to 2015.

14. In I.A 2577/ 2021 (Company Appeal (AT) (Ins.) No. 71 of 2022), similarly the Commissioner of Central Tax, after demand notice, has issued a letter confirming the demand and penalty as noted above. The demand related to the period from June, 2010 to December, 2010.

15. The facts in Company Appeal (AT) (Ins.) No. 70 of 2022 are little different. I.A which was subject matter of Company Appeal (AT) (Ins.) No. 70

of 2022 was I.A 111 of 2021 in which IA following prayers were made by the Appellant:-

- “22. In view of the facts mentioned above, the Applicant prays for the following:*
- a) *That this Hon'ble Tribunal be pleased to quash and/or set aside the*
 - i *Report dated 28th February 2019 issued by Respondent No.4 to Respondent No. 3 (Exhibit “A”);*
 - ii. *Letter dated 28th February 2019 issued by Respondent No. 3 to Respondent No. 1 bearing reference no. RTS/KT-7/63(1-A)/Breach of Terms/2019 dated 28/02/2019 (Exhibit “B”);*
 - iii. *Notice dated 8th May 2019 issued by Respondent No. 2 (on behalf of Respondent No. 1) to the Applicant bearing reference no. Tenancy/T-2/M/s. Ruchi Soya Inds./ 12858/2019 (Exhibit “C”); and*
 - iv. *Notice dated 11th December 2019 issued by Respondent No. 2 (on behalf of Respondent No. 1) to the Applicant bearing reference no. Tenancy/T-2/M/s. Ruchi Soya Inds./ 12858/2019 dated 11.12.2019 (Exhibit “D”);*
 - b) *That this Hon'ble Tribunal be pleased to quash and/or set aside the proceedings being conducted by Respondent No. 1 in furtherance of the Notice dated 8th May 2019 issued by Respondent No. 2 (on behalf of Respondent No. 1) to the Applicant bearing reference no. Tenancy/T-2/M/s. Ruchi Soya Inds./12858/2019 (Exhibit "C") and Notice dated 11th December 2019 issued by Respondent No. 2 (on behalf of Respondent No. 1) to the Applicant bearing reference no. Tenancy/T-2/M/s. Ruchi Soya Inds./ 12858/2019 dated 11.12.2019 (Exhibit “D”);*
 - c) *That pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to the effect, operation and implementation of the:*
 - (i) *Report dated 28th February 2019 issued by Respondent No.4 to Respondent No. 3 (Exhibit "A");*
 - (ii) *Letter dated 28th February 2019 issued by Respondent No. 3 to Respondent No. 1 bearing*

reference no. RTS/KT-7/63(1-A)/Breach of Terms/2019 dated 28/02/2019 (Exhibit "B");

(iii) Notice dated 8th May 2019 issued by Respondent No. 2 (on behalf of Respondent No. 1) to the Applicant bearing reference no. Tenancy/T-2/M/s. Ruchi Soya Inds./ 12858/2019 (Exhibit "C"); and

(iv) Notice dated 11th December 2019 issued by Respondent No. 2 (on behalf of Respondent No. 1) to the Applicant bearing reference no. Tenancy/T-2/M/s. Ruchi Soya Inds./ 12858/2019 dated 11.12.2019 (Exhibit "D")

and restrain the Respondents from taking any steps or in the alternative any coercive steps including repossession of any land or modification of land records, in furtherance thereof;

d) For costs; and

e) Any other reliefs that this Hon'ble tribunal may deem appropriate."

16. In the above I.A reference was made to notices issued to the Appellant for violation of Section 63 (1-A) of the Maharashtra Tenancy and Agricultural Land Act, 1948. Last notice was issued on 11.12.2019 and the proceedings has not yet been culminated. In the IA, there was no imposition of fine or financial claim rather proceeding was initiated alleging breach of the statutory provisions.

17. Learned Counsel for the Appellant in all the Appeals except Company Appeal (AT) (Ins.) No. 70 of 2022 submits that since the claims which are now sought to be realised from the Appellant relate to the period prior to the CIRP dues, the said claim stand extinguished by the judgment of the Hon'ble Supreme Court in **"Ghanshyam Mishra & Ors. vs. Edelweiss Asset Reconstruction Company- Civil Appeal No. 8129 of 2019"**. In

“Ghanshyam Mishra” (supra), the Hon’ble Supreme Court has, in paragraph 102, laid down following:-

“102. 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.”

18. The next judgment on which much reliance was placed is the judgment of the Hon’ble Supreme Court dated 17.02.2020 in **“Ruchi Soya Industries Ltd. vs. Union of India- Civil Appeal No. 447-448 of 2013”**. The said case was a case of Corporate Debtor itself where Corporate Debtor has challenged the demand in a Writ Petition filed in the year 2002. Against dismissal of Writ Petition, the Appeals were filed. The Hon’ble Supreme Court noticed in the judgment the subsequent events, including CIRP and approval of the Resolution Plan, were brought on the record by IA 85939 of 2021. It is useful to notice the facts as noted by the Hon’ble Supreme Court:-

“The appellant has filed the I.A. No. 85939 of 2021 for pointing out the subsequent developments and the disposal of the appeal in terms thereof.

It is not in dispute that during the pendency of the present proceedings, the Standard Chartered Bank had filed proceedings before the National Company Law Tribunal, Mumbai (hereinafter referred to as the "NCLT") in respect of the present appellant under the provisions of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC").

The application of the Standard Chartered Bank under Section 7 of the IBC for initiation of Corporate Insolvency Resolution Process

(hereinafter referred to as the "CIRP") came to be admitted by the learned Adjudicating Authority on 15th December, 2017.

After the procedure, as required under the various provisions of the IBC was completed, an application under Section 30 (6) of the IBC came to be filed by the Resolution Professional for the grant of approval of the Resolution Plan of the successful Resolution Applicant.

Vide order dated 24th July, 2019 read with order dated 04th September, 2019, the application of the Resolution Professional for the grant of approval of the Resolution Plan of the successful Resolution Applicant came to be allowed. As such, the management of the appellant came to be vested in the successful Resolution Applicant.

The short point that is involved is as to whether the claim of the present respondent which was admittedly not lodged before the Resolution Professional after public notices were issued under Sections 13 and 15 of the IBC could be considered at this stage.”

19. The Hon’ble Supreme Court after noticing the facts laid down following in **“Ruchi Soya Industries Ltd.”** (supra):-

“We find that the present appeals are squarely covered by the law laid down by this Court in the case of Ghanashyam Mishra (supra). It will be

relevant to refer to Paragraph 102 of the said judgment which reads as under:

"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 181B 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."

Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent no. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the learned NCLT, all claims stood frozen, and

no claim, which is not a part of the Resolution Plan, would survive.

In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant.

The appeals are allowed, accordingly. Pending I.A.(s), if any, shall stand disposed of.”

20. The Judgments of the Hon’ble Supreme Court in **“Ruchi Soya Industries Ltd.”** and **“Ghanshyam Mishra & Ors.”** (supra) fully covers the issues which have been raised in Company Appeal (AT) (Ins.) Nos. 68, 69 and 71 of 2022. We are of the view that the Applications filed by the Appellant before the Adjudicating Authority being IA Nos.1418 of 2021, 2562 of 2021 and 2577 of 2021 deserves to be allowed and the Adjudicating Authority had not adverted to the law as laid down by the Hon’ble Supreme Court, as noted above, that after approval of the Resolution Plan, all claims which have not been filed in the CIRP and are not part of the Resolution Plan stand extinguished.

21. From the facts brought on the record, it is clear that the Respondents in Company Appeal (AT) (Ins.) Nos. 68, 69 and 71 of 2022 have not filed any claim in the CIRP. Thus, after approval of the Resolution Plan, they can

neither press any claim nor issue any demand notice. We, thus, allow Company Appeal (AT) (Ins.) Nos. 68, 69 and 71 by allowing I.A Nos. 1418/2021, 2562/2021 and 2577/2021.

22. In Company Appeal (AT) (Ins.) No. 70 of 2022, we have noticed that the prayers raised in the IA related to allege violation by Appellant of provisions of Section 63 (1-A) of the Maharashtra Tenancy and Agricultural Land Act, 1948. It is relevant to notice one of the show-cause notices issued by the Commissioner dated 08.05.2019 which is to the following effect:-

“Government of Maharashtra
Revenue and Forest Department
Collector and District Magistrate's Office, Raigad - Alibag
Telephone No: 02141-222118 / 222097/222322 • Fax No: 02141-
2274510
• E-mail: raigadtenancy15@gmail.com

.....
No. Tenancy/T-2/M/s. Ruchi Soya Inds./12858/2019 Date: 08/05/2019

To,
M/s. Ruchi Soya Industries Ltd.
Alibaug

Sub: Breach of Terms in respect of the lands purchased under Section 63-1A of Mumbai Tenancy and Agriculture Lands Act, 1948 for not using the lands for actual purpose of Industrial use.

Ref: Letter of Tahasildar Alibaug bearing No. RTS/KT-7/63(1-A)/Breach of Terms/2019 dated 28/02/2019

Lands in Tal Alibaug Village Chikhali total Gat No.28 total area 9-56-9 (H.R) and Village Jalashi total Gat No.8 total area 1-65-4 (H.R) have been purchased by you in the year 2001-2002 for bonafide Industrial use under Section 63-1A of Mumbai Tenancy and Agriculture Lands Act, 1948. The said lands have not been used for industrial purpose since 15 years of purchase. According to the report submitted by the Tahsildar Alibaug, the land is not in utilisation. Prima facie it appears that you have breached the conditions in respect of the lands purchased under Section 63-1A of Mumbai Tenancy and Agriculture Lands Act 1948.

To explain why action should not be taken in the above case as per Section 63-1A of Mumbai Tenancy and Agriculture Land Act 1948 a hearing is fixed on 21/05/2019 at 3 P.M. You are to be present with all necessary documents. If you fail to remain present on the appointed day and time given to you or fail to produce satisfactory explanation, then it will be considered as you have nothing to say in the said matter and further proper action will be taken. which please note clearly.

(With approval of Hon'ble Addl. Collector)

*Sd/-
For Addl. Collector, Raigad*

Alibaug

Copy to: Tahasildar Alibaug

Two copies of Notice send along with this delivered one copy to party and acknowledgement copy send to this office urgently

*Sd/-
For Addl. Collector, Raigad
Alibaug"*

23. The last notice was issued on 11.12.2019 by the Additional Collector i.e. subsequent to closure of the CIRP. The proceedings initiated under Section 63 (1-A) of the Maharashtra Tenancy and Agricultural Land Act, 1948 could very well be proceeded with and cannot be subject matter of the insolvency process. The facts of the Company Appeal (AT) (Ins.) No. 70 of 2022 are fully covered by the Judgment of the Hon'ble Supreme Court in **"Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Ors. (03.12.2019 - SC) : MANU/SC/1661/2019"**. We, thus, are of the view that IA 111/2021 filed by the Appellant against the Additional Collector and Tehsildar deserves to be rejected. Company Appeal (AT) (Ins.) No. 70 of 2022 is disposed of while rejecting IA No. 111/2021.

24. In result, Company Appeal (AT) (Ins.) Nos. 68, 69 & 71 of 2022 are allowed and Company Appeal (AT) (Ins.) No. 71 of 2022 is disposed of as above.

**[Justice Ashok Bhushan]
Chairperson**

**[Naresh Salecha]
Member (Technical)**

New Delhi
Anjali