Sl. No. 1

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 27.02.2024 AT 01:30 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/74/7/AMR/2021	Admitted	7 of IBC	Dovefin Micro Finance Pvt Ltd Vs Laxme Saai Steel Pvt Ltd
	IA(IBC)/369/2023	U/s 60(5) of IBC, 2016	M/s. Laxme Saai Steel Pvt Ltd vs. Principal Commissioner of Central Tax Visakhapatnam

ORDER

IA (IBC)/369/2023:

Mr. VVSN Raju, Ld. Counsel for the applicant present. Orders pronounced. IA (IBC)/369/2023 is allowed and disposed of and recorded vide separate sheets.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Mohan (Steno) & Swamy Naidu (PS)

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

IA(IBC)/369/2023

IN

CP (IB)/74/7/AMR/2021

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

In the matter of M/s. LAXME SAAI STEEL PRIVATE LIMITED

Between:

M/s. Laxme Saai Steel Private Limited,
Registered Office at Plot No. 181, Block D,
I.P., Autonagar, Gajuwaka Autonagar,
Visakhapatnam, Pedagantyada,
Andhra Pradesh, India- 530012
Represented by Mr. Sanapala Venu Gopal

...Applicant

AND

Principal Commissioner of Central Tax
Visakhapatnam Central GST Commissionerate
GST Bhavan, Port Area, Visakhapatnam-530035

.... Respondents

Date of pronouncement of order: 27.02.2024

CORAM:

SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Appearance:

For Applicant : Mr.V.V.S.N.Raju, Advocate
For Respondents : None appears (Ex-parte)

Sd/- Sd/-

[PER: BENCH]

ORDER

1. This is an application filed by the Applicant under Section 60(5) of the IBC, 2016 seeking direction to the Respondent not to take any steps for execution of the Order No. VSP-CGST-ADC-13/23-24, dated 10.07.2023 to recover the amounts from the Corporate Debtor held by the Resolution Applicant and not to cause any inconvenience or interference with the revival process of the Corporate Debtor and declare the Order No. VSP-CGST-ADC-13/23-24, dated 10.07.2023 as non-est in law in view of the legal position settled by the Hon'ble Apex Court.

2. The facts briefly, as mentioned in the Application, are as follows:

   i. The Company Petition, CP(IB)/74/7/AMR/2021 filed by M/s.Dovefin Microfinance Private Ltd against the Corporate Debtor (**"CD"**), namely, M/s.Laxme Saai Steel Private Limited was admitted, vide Order dated 18.01.2022 and Mr. Rajesh Chillale was appointed as Insolvency Resolution Professional ('IRP") for conducting the CIRP in respect of the CD and later he was appointed as Resolution Professional (RP).

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ii. The RP has initiated steps for preparation of Information Memorandum, inviting Expression of Interest (EoI) and Resolution Plans from intending bidders etc. In response to the same, the RP has received ten (10) EoIs from ten (10) Prospective Resolution Applicants (PRAs). After scrutiny, they were found eligible as per the evaluation matrix. However, out of the said ten applicants, only one resolution plan was received from Mr.Naval Kishore Khaitan, who deposited Earnest Money and complied with all procedural formalities besides compliance with the terms and conditions of the notification issued by the RP. After discussions and negotiations with the resolution applicant on 22.06.2022, the RP received a revised Resolution Plan from the Resolution Applicant and the same was submitted to the Committee of Creditors ("**CoC**") for their approval.

iii. In the 7th CoC meeting held on 25.06.2022, the CoC approved the Resolution Plan with 100% voting and directed the RP to file an application before the Tribunal for approval of the Resolution Plan and the same was approved by this Authority, vide Order dated 16.08.2022 in I.A. No. 133/2022 in CP(IB) No. 74/7/AMR/2021.

Sd/-

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iv. According to the approved Resolution Plan, the Resolution Applicant paid an amount of Rs.19.01 crores to the RP for payment towards CIRP costs, workmen dues, and payment to Operational Creditors and Financial Creditors and also for repairs and capital expenditure as well as working capital for revival of the Company and took over the assets of the company.

v. According to Clause 14.3 of the Resolution Plan, an amount of Rs.84,00,000/- was earmarked for Operational Creditors other than Workmen and Employees. The Clause 14.3.2 states that upon payment of the said amount to the Operational Creditors, all such liabilities with regard to any claims relating to the period prior to the date of approval of this Tribunal, shall stand fully discharged and settled. Clause 14.3 of Resolution Plan is reproduced below for ready reference:

"***14.3. Operational Creditors (Including the Central and State Government or Any Local Authority)***

14.3.1. The Resolution Applicant proposes to pay an amount of Rs.84,00,000/- (Rupees Eighty-Four Lakhs Only) to the Operational Creditors other than Workmen and Employees. In case any amount is payable to such Operational Creditors over and above such amount, towards the

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minimum amount as may be required to be paid to them under the Code, the Resolution Applicant shall pay the same; however, any such excess amount shall be deducted from the total pay-out to be paid to the Financial Creditors.

14.3.2. Upon the payment of the aforementioned Operational Creditors, the Company shall have no liability towards the said Operational Creditors with regard to any claims relating in any manner to the period prior to the NCLT Approved Date. All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled, with there being no further claims whatsoever, and all forms of security created or suffered to exists, or rights to create such a security, to secure any obligations towards the said Operational Creditors, whether by way of guarantee, bank guarantee, letters of credit or otherwise, shall immediately, irrevocably, and unconditionally stand released and discharged, and the said Operational Creditors shall be deemed to have waived all rights to invoke or enforce the same."

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vi. According to the provisions of Section 31 of the Insolvency and Bankruptcy Code, 2016, the Resolution Plan as approved by the CoC and the Tribunal shall be binding on the CD and its employees, members, creditors including the Central Government, any State Government, any local authority to whom a debit in respect of the payment of the dues arising under any law for the time being in force such as authority to whom statutory dues owed, guarantors and other stakeholders involved in the Resolution Plan. In other words, the Plan is binding on all creditors as well as Government Departments for statutory dues and all other persons involved in the process. They are entitled to receive amounts in accordance with the resolution plan and the residue, if any, payable by the CD towards their dues shall get extinguished.

vii. The Applicant has relied on the judgments in ***Ghanashyam Mishra and Sons (P) Ltd. versus Edelweiss Asset Reconstruction Co. Ltd. (2021)9 SCC 657 and Committee of Creditors of Essar Steel India Limited versus Satish Gupta and Ors. (2020) 8 SCC 531*** in support his case.

viii. The Successful Resolution Applicant, i.e. Mr. Naval Kishore, shall not be liable in any manner whatsoever

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for any amounts that are liable to be paid by the CD during the period prior to the approval of the Resolution Plan and it is a settled legal position that the Successful Resolution Applicant should not be burdened with any other liability in relation to the period which is prior to the approval of the Resolution Plan.

ix. Upon the compliance with the terms and conditions of the Resolution Plan, the CD stood transferred by operation of law to the Resolution Applicant free from any encumbrance or any liability relating to the affairs of the CD prior to the date of the Order of this Tribunal for the Resolution Plan. In other words, the CD in the hands of the Resolution Applicant is a new born baby without any liabilities prior to its birth, thus the new management of the CD and the CD are not at all liable for any liabilities relating to the period prior to the approval date of the Resolution Plan. While the above is factual and legal position, the Respondent deliberately passed Orders dated 10.07.2023 for the tax period from August, 2017 to March, 2018, which is prior to the CIRP and the date of Order approved by this Tribunal, thereby imposing liability on the CD in the hands of the Resolution Applicant.

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x. The Respondent Department submitted their claim during the CIRP period to the RP and when there was a dispute regarding the quantum of claim admitted, the Respondent Department filing an I.A. No. 85 of 2022 before this Tribunal and the same was allowed by the Tribunal, vide order dated 03.01.2023. According to the Order dated 03.01.2023, the RP has paid an amount of Rs.39,36,920/- to the Respondent.

xi. The Respondent Department has already submitted their Claim and the same was dealt with in the Resolution Plan. However, with respect to the same claim and interest thereon and penalty, after closure of the CIRP proceedings, the Respondent passed an Order dated 10.07.2023 thereby directing the CD to pay the amount quantified in the Order. The Order is made clearly in contravention of the provision of the IBC, 2016 and the legal position settled by the Hon'ble Apex Court in a catena of cases. Therefore, the Order is totally non-est in law. The Respondent cannot initiate any proceedings in pursuance of the said Order. While it is so, the Respondent is contemplating to initiate recovery proceedings in pursuance of the said order, which is totally illegal and deliberate violation of law. Unless, the Respondent is directed suitably against initiating any action pursuant to the said Order dated 10.07.2023, the Petitioner

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would suffer irreparable loss in addition to putting to inconvenience and interruption in the process of reviving the Corporate Debtor. Therefore, having no alternative, the petitioner has filed this I.A seeking necessary directions to the Respondents. It is submitted that the cause of action for the Applicant arose when the Respondent made the Order No. VSP-CGST-ADC-13/23-24, dated 10.07.2023 and it is continuing in view of the steps being taken to execute the Order. Hence, the applicant filed this application.

3. Inspite of several opportunities, there is no representation from the Respondent and hence, the Respondent is set-exparte, vide order dated 08.12.2023.

4. We have heard the Ld. Counsel for the Applicant and perused the record.

5. The legal position is settled on the question in controversy. In ***Ghanashyam Mishra and Sons (P) Ltd. versus Edelweiss Asset Reconstruction Co. Ltd. (2021)9 SCC 657,*** it was held:

> "95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claim 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

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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;

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 the 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 approved under section 31 could be continued".

6. This position was again reiterated by the Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited V. Satish Gupta and Ors. (2020) 8 SCC 531: 2019 SCC Online SC 1478*** as follows:

> "a successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him was been accepted".

7. It is a settled legal position that the successful resolution applicant should not be burdened with any other liability in relation to the period which is prior to the approval of the Resolution Plan.

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8. In view of the facts and legal position, the Respondent Department cannot enforce Order No. VSP-CGST-ADC-13/23-24, dated 10.07.2023 to recover the amounts from the CD held by the Resolution Applicant and not to cause any inconvenience or interference with the revival process of the CD and the Order No. VSP-CGST-ADC-13/23-24, dated 10.07.2023 is non-est in law. Accordingly, IA(IBC)/369/2023 in CP(IB)/74/7/AMR/2021 is allowed and disposed of.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Swamy Naidu (PS)