

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA 5633 of 2023

In

CP (IB) 3784 of 2018

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the
NCLT Rules, 2016

IN THE MATTER OF

**GMT Pipes & Tubes Private Limited
("GMT") in consortium with Invent Assets
Securitisation & Reconstruction Private
Limited ("Invent")**

125, Solaris 2, opposite gate no. 6, L & T,
Saki Vihar Road, Andheri East, Powai,
Mumbai – 401004 and Invent having its
registered office at Bakhtawar, Suite B,
Ground Floor, Backbay Reclamation, 229,
Nariman Point, Mumbai - 400021.

... Applicant

V/s.

Mr. Hastimal Kachhara

Member of Monitoring Committee and
Resolution Professional,

A-602, Nirman Apartments, Pump House,
Vikas Nagar, Andheri (East), Mumbai
400093.

... Respondent

IN THE MATTER OF

Oriental Bank of Commerce

... Financial Creditor

V/s.

Steamline Industries Limited

... Corporate Debtor

Order delivered on :- 22.03.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant/RP : Adv. Ayush Rajani

ORDER

Per: - Anil Raj Chellan, Member (Technical)

1. The instant Application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 by GMT Pipes and Tubes Private Limited in consortium with Invent Assets Securitisation & Reconstruction Private Limited, the Successful Resolution Applicant ('SRA') of Steamline Industries Limited, ('the Corporate Debtor') seeking certain clarifications/modifications of the order dated 11.08.2023 of this Tribunal approving the Resolution Plan. The Respondent Mr. Hastimal Kachhara, is a Member of Monitoring Committee and Resolution Professional of the Corporate Debtor.

Brief facts leading to the filing of the present Application are as under:-

2. The Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor was initiated pursuant to an order passed by this Tribunal vide order dated 13.03.2019 wherein the Respondent was appointed as the Resolution Professional ('RP'). The Insolvency Process culminated in approval of a Resolution Plan submitted by the SRA vide order of this Tribunal dated 11.08.2023 ('the Approval Order').
3. The Applicant is seeking certain clarifications and modifications to the Approval Order for successful implementation of the Resolution Plan.

Submission of the SRA:-

4. It is stated by the SRA that it should be allowed to carry forward and set off any losses and unabsorbed depreciation of all the preceding eight years from the Insolvency Commencement Date for a fresh period of eight years. It has been further asserted that a direction to the Income Tax Authorities is required to consider any income arising due to waiver of all liabilities under the Resolution Plan to not be treated as income under section 41(1) of the Income Tax Act, 1961 and no income tax or Minimum Alternate Tax ('MAT') shall be leviable on the same.
5. It is further submitted that the write off of interest and other liabilities represent a notional profit/income in the profitability statement of the Corporate Debtor and such notional profit may also attract MAT u/s 155 JB of the Income Tax Act, 1961. Such a MAT would also bring a substantial amount of liability on the Corporate Debtor acquired by the SRA. It has, therefore, sought waiver of any potential MAT liability occurring on account of write back of the loans in terms of the Resolution Plan.

6. It is also submitted that the Corporate Debtor cannot be burdened with the prior obligations to fulfil monetary or any other obligations in respect of export obligation or other statutory compliance with RoC/SEBI/SFIO/ED, stock exchange etc. and sought discharge from those obligations without any charges, penalties, interest etc.
7. It is submitted by the SRA that the operative portion of the Approval Order needs to be amended and clarified to address those potential liabilities arising on the Resolution Plan on account of the Approval Order. In support thereof, the Applicant/SRA relied upon the decisions of the Hon'ble Supreme Court in *Ghanshyam Mishra and sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, 2021 SCC Online SC 313* which established the clean slate theory and the decision in *Committee of Creditors of Essar Steel Limited v. Satish Kumar Gupta and Ors. (2020) SCC 531*.
8. The Respondent/Resolution Professional of the Corporate Debtor has not filed any reply.
9. We have considered the submissions of the learned Counsel for the Applicant and perused the documents on record.
10. We need to notice the relevant portion/sub-paragraphs of the Approval Order which is sought to be modified/clarified:
 - vi. *The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.*
 - vii. *This Tribunal will not deter such Authorities to deal with any of the*

issues arising after giving effect to the Resolution Plan.

- viii. As to the Reliefs sought stated in F(l) of the Resolution Plan, the exemption as sought for in relation to the stamp duty or tax liability, registration charges, fees arising out of the implementation of the Resolution Plan is not granted.*
- ix. As to Reliefs sought F(u) for waiver of any potential direct / indirect tax liability (including but not limited to any potential MAT liability, potential liability under Section 56 and 50CA of Income Tax Act, 1961/interest/penalty) to be levied in future is not granted.*
- x. As regards the other reliefs and concessions as sought for which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicants. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above.*
- xi. The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.*
- xii. Further, in terms of the judgement of Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited, 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 are not a part of the Resolution Plan.*

11. Before we proceed further, the principal issue which needs consideration by us is regarding the extent of authority that can be exercised by the same forum after the passing of an order approving the Resolution Plan. The Applicant is seeking an exercise of Tribunal's residuary powers under Section 60(5) of the Code and Tribunal's inherent powers under Rule 11 of the NCLT Rules. The Tribunal's residuary jurisdiction, though wide enough to cover any question of law or fact, arising out of or in relation to the insolvency resolution, the Tribunal cannot do what the Code did not consciously provide it the power to do, and hence the Tribunal's residuary jurisdiction must be done in a manner which comports with the broader goals of the Code. Rule 11 of the NCLT Rules, 2016 framed under Section 469 of the Companies Act, 2013, which is in *pari materia* with Section 51 of the Code of Civil Procedure, 1908, preserve the inherent powers of the Tribunal in the following terms:

“Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

It is a well settled proposition of law that the inherent power of the Tribunal is to be pressed into service for meeting the ends of justice or to prevent abuse of the process of the Tribunal. However, this power at no stretch of imagination can be extended to rehear or review the case. Keeping the above principles in mind, we need to consider the submissions of the Applicant.

12. It is submitted by the Applicant that the reliefs/exemptions and waivers granted in the Approval Order is not in consonance with the directions issued by the Hon'ble Supreme Court in the matter of *Ghanshyam Mishra (supra)* and are rather contrary requiring the Applicant to approach

individual authorities to extinguish statutory liability/obligation. It is further stated that sub-para 26(vi) in the operative part of the Approval Order seeks to bring alive claims of statutory authorities who did not participate in the 'Resolution Process' and therefore cannot be permitted to belatedly open issues that are deemed to be settled upon approval of the Resolution Plan. On the basis of the above, the Applicant sought insertion of the word "Prospective" in sub-para 26(vi) of the operative part. It is, however, pertinent to notice that this Tribunal in the Approval Order specifically referred the decision of *Ghanshyam Mishra* (Supra) in para (xii) and explicitly mentions that 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 are not a part of the Resolution Plan. Therefore, it is explicitly clear that sub-para 26(iv) refers only to prospective obligations.

13. It is also submitted by the Applicant that Para 26(xii) of the Approval Order requires certain modifications to spell out specifically that **all claims including statutory dues payable to Government and other Authorities shall stand extinguished**. As stated above, this is also granted in the Approval Order and the modification sought in the Application is clarificatory in nature.
14. It is also the submission of the Applicant that the Approval Order requires further modifications to grant further reliefs and concessions sought in the Resolution Plan. It has been further asserted that all the reliefs and concessions sought in the Resolution Plan have been approved by the CoC in exercise of its commercial wisdom and hence there is no scope for interference by the Tribunal with the commercial aspects of the decision of the CoC. In support thereof, the Applicant has relied on the decision in **Essar Steel (Supra)**. It is to be noted that the

commercial wisdom that approved the resolution plan is to be understood with prudence and in accordance with the terms of the resolution plan. A plain reading of the Resolution Plan as a whole, clearly establishes that approval of all reliefs and concessions sought in the Resolution Plan was never been made integral or protected from judicial scrutiny. Therefore, the Tribunal is justified in exercising adjudicatory process with regard to application of other statutes in the implementation of the resolution plan.

15. It is observed that the Applicant sought various other concessions/reliefs which were not granted or specifically denied by this Tribunal in the Approval Order. This Tribunal in exercise of its residual powers and inherent powers cannot grant those reliefs and concessions which are not allowed or rejected by this Tribunal. The Approval Order can very well be subjected to appeal before higher forum, but cannot be changed or modified by the same forum. Thus, other prayers sought in the Application, such as allowing carry forward and set off of any losses and unabsorbed depreciation of all the preceding eight years from the Insolvency Commencement Date for a fresh period of eight years, waivers u/s 41(1) & 155 JB of the Income Tax Act, statutory compliance with RoC/SEBI/SFIO/ED, stock exchange etc. without any charges, penalties, interest etc. cannot be considered afresh and those issues sought to be raised by the Applicant needs no consideration by this Tribunal.
16. In the facts and circumstances of the case, we allow modification of clauses 26(vi) and 26(xii) of the Approval Order as under:

“The approval of the Resolution Plan shall not be construed as waiver of any *prospective* statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate

Authorities in accordance with law. Any waiver sought in the Resolution Plan shall be subject to approval by the Authorities concerned.”

“Further, in terms of the judgement of Hon’ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims *including the Statutory dues owed to the Central Government, any State Government, or any local authority* which are not a part of the Resolution Plan, shall stand extinguished and *no proceedings in respect of such dues for the period prior to the date the Adjudicating Authority was granting its approval under Section 31 could be continued and further* no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.”

17. In view of the above, **IA 5633 of 2023** is **partly allowed** in terms of the prayer clause (c) and (d). All other prayers for modification of the Approval Order are disallowed.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

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