

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1553 of 2022 and batch

In W.P.(C) No.1553 of 2022

Adhunik Metaliks Ltd.

....

Petitioner

Mr. S.K. Acharya, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. S.K. Pradhan, Additional Standing Counsel

In W.P.(C) No.37388 of 2020

Adhunik Metaliks Ltd.

....

Petitioner

Mr. S.K. Acharya, Advocate

-versus-

***Odisha Mining Corporation Limited
and others***

....

Opposite Parties

In W.P.(C) No.13106 of 2021

Adhunik Metaliks Ltd.

....

Petitioner

सत्यमेव जयते

Mr. S.K. Acharya, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. S.K. Pradhan, Additional Standing Counsel

In W.P.(C) No.13108 of 2021

Adhunik Metaliks Ltd.

....

Petitioner

Mr. S.K. Acharya, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. S.K. Pradhan, Additional Standing Counsel

In W.P.(C) No.13109 of 2021

Adhunik Metaliks Ltd.

....

Petitioner

Mr. S.K. Acharya, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. S.K. Pradhan, Additional Standing Counsel

In W.P.(C) No.33202 of 2021

Adhunik Metaliks Ltd.

....

Petitioner

Mr. S.K. Acharya, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. S.K. Pradhan, Additional Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE M.S. RAMAN

ORDER

08.12.2022

Order No.

05. 1. The common issue in all these writ petitions concerns the validity of the demands raised against the Petitioner for the periods prior to the period during which the proceedings were pending vis-à-vis the Petitioner before the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 (IBC Code).
2. The contention of the Petitioner has been that as long as the demands raised against the Petitioner pertain to periods prior to the commencement of the insolvency proceedings, those demands can no longer be enforced against the Petitioner. In support of such contention, reliance is placed on the following observations of the Supreme Court of India in ***Ghanashyam Mishra & Sons Private***

Limited v. Edelweiss Asset Reconstruction Company Limited
2021 SCC OnLine SC 313:

“93. As discussed hereinabove, one of the principal objects of I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

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;”

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 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.”

3. Incidentally, the above decision has been followed by this Court in its judgment dated 21st June 2021 in W.P.(C) No.8259 of 2019 (*M/s Sree Metaliks Ltd. v. State of Odisha*)

4. As far as the present writ petitions are concerned, the date of commencement of the insolvency was 3rd August 2017 and the date

of approval of the resolution plan by the NCLT was 17th July, 2018. The order of the National Company Law Appellate Tribunal (NCLAT) by which the resolution plan was made effective was 3rd March, 2020.

5. Mr. S.K. Acharya, learned counsel appearing for the Petitioner has placed before the Court a chart in tabular form the writ petition number and the corresponding period for which the demand relates either under the Orissa Value Added Tax Act or the Orissa Entry Tax Act or the Central Sales Tax Act or the Orissa Sales Tax Act. The said details are as under:

S. No.	CASE NUMBER	PERIOD TO WHICH THE DEMAND RELATES TO	RELEVANT DATES RELATING TO CIRP OF THE PETITIONER
1.	W.P.(C) No.1553/2022	2007-2008 & 2011-2013 (OET)	03.08.2017- Insolvency Commencement Date
2.	W.P.(C) No.33202/2021	01.04.2015 to 30.09.2015 (CST)	
3.	W.P.(C) No.37388/2020	01.04.2016 to 30.06.2017 (Service Tax Royalty)	17.07.2018- Resolution Plan Approval order by NCLT 03.03.2020- Order of NCLAT by which Resolution Plan was made effective

6. With all the above periods of demand being prior to the date of commencement of the resolution plan approved by the NCLAT, following the dictum in ***Ghanashyam Mishra & Sons Private***

Limited (*supra*), the Court quashes all the demands, which have been challenged in these writ petitions.

7. The writ petitions are accordingly disposed of.

8. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin

