

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

**I.A. 413 OF 2023
I.A. 1093 OF 2023
I.A. 1095 OF 2023
I.A. 5086 OF 2023**

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

**Patanjali Foods Limited
formerly known as Ruchi Soya
Industries Limited**

...Applicant

Vs.

**Assistant Commissioner of Income Tax
Central Circle 7(2) Mumbai**

...Respondent

In

M.A. 1721 OF 2019

Under Section 30 of Insolvency &
Bankruptcy Code, 2016

**Shailendra Ajmera,
Resolution Professional of Ruchi Soya
Industries Limited**

...Applicant

In the matter of

C.P.(IB) No. 1371/MB/2017

C.P.(IB) No. 1372/MB/2017

Standard Chartered Bank
& DBS Bank Limited

Financial Creditor

Vs.

Ruchi Soya Industries Limited

Corporate Debtor

Order delivered on: 12.12.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : Mr. J.P. Sen, Sr. Advocate a/w Mr.
Kunal Vaishnav & Ms. Surbhi Soni
i/b MGV & Associates (Patanjali
Foods Limited)

For the Respondent : None

ORDER

Per: V.G. Bisht, Member (Judicial)

1. These Four Applications viz. IA 413/2023, IA 1093/2023, IA 1095/2023, and IA 5086/2023 have been filed by M/s PATANJALI FOODS LIMITED (FORMERLY KNOWN AS RUCHI SOYA INDUSTRIES LIMITED) {"Applicant"} in Miscellaneous Application no. 1721/2019 in C.P. No. 1371/I & BP/NCLT/MAH/2017 and C.P. No. 1372/I & BP/NCLT/MAH/2017 to seek Order against the Respondents in relation to notice(s)/Order(s) issued under Section 148A, 148 and 271 of the Income Tax Act, 1961 by them for different

assessment years.

2. The Applicant is a company incorporated under the Companies Act, 1956. The Applicant was undergoing corporate insolvency resolution process from 15th December 2017. By and under an Order dated 4th September 2019 (“Plan Approval Date”), this Tribunal approved the Resolution Plan submitted by the Patanjali Consortium, in terms of the Insolvency and Bankruptcy Code, 2016 [‘Code’], pursuant to which the Patanjali Consortium completed all the formalities and took over the Applicant from 18th December 2019. As of 24.06.2022, the name of the Applicant has changed from Ruchi Soya Industries Limited to Patanjali Foods Limited.
3. IA 413/2023 is filed in relation Assessment Year 2013-14, wherein the following notices/orders have been challenged by the Applicant -
 - a. Notice dated 13.09.2022 bearing no.ITBA/PNL/S/271(1)(c)/2022- 23/1045445189(1) under 274 read with section 271(1)(c) of the Income Tax Act, 1961;
 - b. Order dated 27.09.2022 under Section 271(1)(c) of the Income Tax Act passed pursuant to notice dated 13.09.2022 and its Computation Sheet; and
 - c. Demand Notice i.e. Notice of Demand dated 27.09.2022 under Section 156 of the Income Tax Act.
- 3.1. In this Application, Assistant Commissioner of Income Tax Central Circle 7(2), Mumbai is Respondent No. 1, who had issued the initial notices on which basis the present demand has

been raised and has thereafter issued the Impugned Notices and Orders and raised the demand; Additional Commissioner of Income Tax Central Range 7, Mumbai is Respondent No. 2; and Principal Commissioner of Income Tax (Appeals), PCIT 1 is Respondent No. 3 i.e. the officers having administrative charge with respect to Respondent No.1.

4. IA 1093/2023 is filed in relation Assessment Year 2015-16, wherein the following notices/orders have been challenged by the Applicant

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- a. Order dated 27.07.2022 passed by Respondent No.1 under Section 148A(d) of the Income Tax Act for AY 2015 - 2016 *inter alia* recording that the liability arising out of the reassessment proceedings are future liability and thus do not stand extinguished and that on the basis of the purported material on record, Respondent No.1 was satisfied that it was a fit case to issue notice under Section 148 of the Income Tax Act;
- b. In furtherance to the above, an intimation Letter dated 29.07.2022 in respect of the Notice issued under Section 148 of the Income Tax Act dated 29.07.2022 issued by Respondent No.1, whereby Respondent No.1 proposed to reassess the income for the AY 2015 - 16 and calling upon the Applicant to furnish a return in the prescribed form;
- c. Letter dated 05.01.2023 issued by Respondent No.1 once again calling upon the Applicant to furnish its Return of Income;

- d. Show Cause Notice dated 08.02.2023 issued by Respondent No.1 calling upon the Applicant to show cause why the reassessment proceedings against Respondent No.1 should not be completed under Section 144 of the Income Tax Act i.e. making best judgment assessment;
- 4.2. In this Application, Assistant Commissioner of Income Tax Central Circle 7(2), Mumbai is Respondent No. 1, who had issued the initial notices on which basis the present reassessment has been initiated and has thereafter issued the Impugned Notices and Orders to complete the reassessment; and Principal Commissioner of Income Tax (Appeals), PCIT 4 is Respondent No. 4 i.e. the officer having administrative charge with respect to Respondent No.1.
- 4.3. It is stated that the Applicant has replied to the Notices as detailed hereinafter. It is clear that the subsequent notices are all in furtherance of the Notice issued under Section 148 of the Income Tax Act dated 27.07.2022 which itself is in furtherance of the Original Section 148 Notice issued on 30.06.2021 which has been set aside by this Tribunal.
5. IA 1095/2023 is filed in relation Assessment Year 2016-17, wherein the following notices/orders have been challenged by the Applicant
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- a. Order dated 20.07.2022 passed by Respondent No.1 under Section 148A(d) of the Income Tax Act for AY 2016 - 2017 *inter alia* recording that the liability arising out of the reassessment proceedings are future liability and thus do

not stand extinguished and that on the basis of the purported material on record, Respondent No.1 was satisfied that it was a fit case to issue notice under Section 148 of the Income Tax Act;

- b. In furtherance to the above, an intimation Letter dated 22.07.2022 in respect of the Notice issued under Section 148 of the Income Tax Act dated 22.07.2022 issued by Respondent No.1, whereby Respondent No.1 proposed to reassess the income for the AY 2016 - 17 and calling upon the Applicant to furnish a return in the prescribed form;
 - c. Letter dated 05.01.2023 issued by Respondent No.1 once again calling upon the Applicant to furnish its Return of Income;
 - d. Show Cause Notice dated 08.02.2023 issued by Respondent No.1 calling upon the Applicant to show cause why the reassessment proceedings against Respondent No.1 should not be completed under Section 144 of the Income Tax Act i.e. making best judgment assessment;
 - e. Notice dated 08.03.2023 issued under Section 142(1) seeking certain documents /information from the Applicant.
- 5.2. In this Application, Assistant Commissioner of Income Tax Central Circle 7(2), Mumbai is Respondent No. 1, who had issued the initial notices on which basis the present re-assessment has been initiated and has thereafter issued the Impugned Notices and Orders to complete the reassessment; and Principal Commissioner of Income Tax (Appeals), PCIT 4 is

Respondent No. 4 i.e. the officer having administrative charge with respect to Respondent No.1.

- 5.3. It is stated that the Applicant has replied to the Notices as detailed hereinafter. It is clear that the subsequent notices are all in furtherance of the Notice issued under Section 148 of the Income Tax Act dated 22.07.2022 which itself is in furtherance of the Original Section 148 Notice issued on 01.06.2021 which has been set aside by this Tribunal.
6. IA 5086/2023 is filed in relation Assessment Year 2019-20, wherein the following notices/orders have been challenged by the Applicant -
- a. Notice dated 20.03.2023 issued by Respondent No.1 under Section 148A(b) of the Income Tax Act bearing no. ITBA/AST/F/148A(SCN)/2022-23/1051013780(1) calling upon the Applicant to show cause why a notice under Section 148 of the Income Tax Act should not be issued;
 - b. Order dated 10.04.2023 passed by Respondent No.1 under Section 148A(d) of the Income Tax Act for AY 2019 - 2020 *inter alia* recording that in view of certain transactions that occurred during the period and on the basis of the purported material available on record, Respondent No.1 was satisfied that it was a fit case to issue notice under Section 148 of the Income Tax Act;
 - c. In furtherance to the above, a Notice has been issued under Section 148 of the Income Tax Act dated 10.04.2023 by Respondent No.1, whereby Respondent No.1 proposed to

reassess the income for AY 2019 - 20 and calling upon the Applicant to furnish a return in the prescribed form; and

- d. Notice received on 24.04.2023, from Respondent No.1, calling upon the Applicant to file the Return of Income in response to the Section 148 Notice issued by Respondent No.1.

7. It is the case of the Applicant that the Impugned Notice(s), pursuant to which Orders have been issued creating demands, are in respect of a period that relates to a period prior to the date of the approval of the Resolution Plan. It is pertinent to note here that the Assessment Year under the Income Tax Act, 1961 is the year commencing from 1st April next following the immediately preceding Financial Year. The latest Assessment year in relation to dispute has arisen is A.Y. 2019-20, which pertain to Financial Year ended on 31.03.2019.

7.1. Thus, on approval of the Resolution Plan, all claims prior to the date of approval stand extinguished i.e. all claims that had been filed shall stand extinguished in the manner in which they had been dealt with in the Resolution Plan and the claims which had not been filed cannot be agitated after the approval of the Resolution Plan. The same is also reinforced by the provisions of Sections 31 and 32A read with Section 238 of the Code.

7.2. It is not out of place to mention that the Impugned Notice, is nothing but another attempt by the tax authorities to claim tax from the Applicant relating to period(s) prior to the date of

approval of the Resolution Plan and is accordingly illegal, perverse, void and contrary to the principles of the Code and the Orders passed by this Tribunal and thus is liable to be quashed and set aside.

- 7.3. The Applicant has also stated that the Impugned Notice is also illegal, bad in law and contrary to the provisions of the IT Act itself and the present Application is without prejudice to any rights and contentions that the Applicant has to file appropriate proceedings under law to challenge the Impugned Notice on any other grounds that may be available.
- 7.4. Accordingly, the applicant has preferred present Applications *inter alia* seeking to quash and/or set aside the Impugned Show Cause Notice, Impugned Order and Impugned Demand Notice and restrain the Respondents from taking any further steps / action against the Applicant.
8. We have heard the Counsel and perused the material available on record.
- 8.1. We note that the corporate insolvency resolution process [**CIRP**] was initiated in respect of Applicant under the provisions of the Code by an order of the Hon'ble National Company Law Tribunal, Mumbai dated 8th December 2017 read with 15th December 2017. Pursuant to commencement of CIRP, a Resolution Plan submitted by Pantanjali Consortium, which is in ownership, control and management of the Corporate Debtor, was approved by the Committee of Creditors and there-after was approved by this Tribunal on 04.09.2019. Accordingly,

claims of all creditors, whether filed by them or not, pertaining to the period upto 3.9.2019 are to be dealt with in accordance with such approved Resolution Plan. The debt remaining unpaid in terms of approved Resolution Plan extinguishes.

8.2. We also find that the Respondents have filed claim before the Interim Resolution Professional/Resolution Professional in response to notice inviting claims from the Creditors. The Respondents have proceeded on the premise that the demands raised or action initiated after the approval of the resolution plan is not barred under the Code.

8.3. The Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Limited through its authorized signatory vs. Satish Kumar Gupta & Ors.* {CIVIL APPEAL NO. 8766-67 OF 2019} (2019 ibclaw.in 07 SC) held that -

"67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution

applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.

8.4. Further, in the case of *Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. & Ors (2021) ibclaw.in 54 SC*, the Hon'ble Supreme Court held that –

“86. 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. 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 on-going 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 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.

87. We have no hesitation to say, that the word "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 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."

- 8.5. In view of the aforesaid decisions rendered by the Hon'ble Apex Court, it is clear that no proceeding or claim lie in relation to period upto the date of approval of the Resolution Plan under the Code. Accordingly, we have no hesitation to hold that the notices/orders/letters issued by the Income Tax Department in relation to Assessment Year 2013-14, 2015-16, 2016-17 and 2019-20 are illegal and non-est in so far as those demands have been created or those notices have been issued after the approval of the Resolution Plan in relation to the period upto the Plan approval date i.e. 04.09.2019. The Respondents cannot read the provisions of the code so as to mean that they can take actions subsequent to plan approval date even if such action is in relation to period upto the plan approval date.
9. In view of the foregoing, IA 413/2023, IA 1093/2023, IA 1095/2023 and IA 5086/2023 are disposed of as allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)