

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

IA No. 17 of 2021
IN
CP (IB) NO.20/GB/2017

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J): **Hearing through**
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 30.07.2021**

Name of the Company: Assam Company India Ltd.
Versus
Commissioner of Taxes & others

Section of the Companies Act: Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MS. R. P. PAUL	Advocate	Petitioner	Present in Video Conference
2.	NONE	Advocate	Respondents	

ORDER
Date of Order: 30.07.2021

The parties are represented through their respective Counsel(s).

Today, the present matter is kept for pronouncement of order.

The present matter i.e. IA No.17 of 2021 is disposed of.

The detailed order is recorded vide separate sheet.

Sd/-

(H. V. Subba Rao)
Member (Judicial)
& Adjudicating Authority
/Deka-30.07.2021/

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA/17/2021
IN
CP (IB) No. 20/GB/2021**

In the matter of:

Assam Company India Ltd. & : Applicant

V/s

Commissioner of Taxes & Anr. : Respondents

Order delivered on 30th July, 2021.

Coram:

Hon'ble Shri H. V. Subba Rao, Member (J):

Hearing through

And

Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

Appearance: For the Petitioner - Ms. R. P. Paul, Advocate
For the Respondent - None

ORDER

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. An application under Section 7 of Insolvency and Bankruptcy Code, 2016 was filed by the Financial Creditor against the Applicant before this Hon'ble tribunal and by an order dated 26th October, 2017 the Hon'ble Tribunal admitted the said application and initiated Corporation Insolvency Resolution Process (CIRP) against the Applicant under Section 14 of IBC, 2016. In the said order this Hon'ble Tribunal also appointed an Interim Resolution Professional (IRP) for collating the claims of the Applicant. Copy of the orders dated 26th October, 2017 along with the Corrigendum dated 2nd November, 2017 are enclosed herewith and marked as **Annexure A**.

2. During the Corporate Insolvency Resolution Process the Respondent did not file its claim with the IRP. Thereafter, the IRP was replaced by the Resolution Professional who floated the Expression of Interest for inviting the potential Resolution Applicants to submit their Resolutions Plans.

3. The Resolution Plan was submitted by the Resolution Applicant being BRS Ventures Limited (hereinafter referred to as the resolution applicant) and it was duly accepted by the majority votes in the 13th Meeting of Committee of Creditors held on 10th August, 2018. This Hon'ble Tribunal also approved the said Resolution Plan vide order dated 20th September, 2018. Copy of the said order dated 20th September, 2018 along with the resolution plan are enclosed herewith and marked as **Annexure B** and **Annexure C** respectively.

4. After approval of the Resolution Plan by the Hon'ble Tribunal, the Applicant vide its letter dated 27th September, 2018 intimated the Respondent No. 2 about the approval of the Resolution Plan. Copy of the Letter dated 27th September, 2018 is enclosed herewith and marked as **Annexure D**.

5. In the approved Resolution Plan it was clearly stated that barring aside the claims admitted and forming part of the Resolution Plan and other claim and/or demand prior to the effective date shall stand extinguished.

6. That on 11th March, 2019 the Applicant sent a letter to the Respondent No. 1 bringing to their knowledge the commencement of Corporate Insolvency Resolution Process against the Applicant and subsequent approval of the Resolution of BRS Ventures Investment Limited (hereinafter referred to as the successful resolution applicant) by this Hon'ble Tribunal wherein the successful Resolution Applicant has already infused the amount of Rs. 1,064 Cr. and has paid off/ settle the claim of the stakeholders as per the approved Resolution Plan out of which Rs.18.93 Crores has been paid to the Operational Creditors. The said letter requested to extinguish all the disputed and undisputed claims against the Applicant relating to the period prior to the

effective date i.e. 20th September 2018 in terms of the approved Resolution Plan. Copy of the letter dated 11th March, 2019 is enclosed herewith and marked as **Annexure E**.

7. However, the Respondent No. 1 failed to give any reply to the letter dated 11th March 2019 sent by the Applicant.

8. It is pertinent to mention here that the Respondent No. 2 passed two orders of assessment dated 4th July, 2015 under Section 19 (B) of the Income Tax Act, 1961 and directed the Applicant to pay an amount of Rs.9.29 Crore and Rs.4.52 respectively for the assessment year 2013-2014 and 2014-2015. The copy of the Assessment order for the AY 2013-2014 and 2014-2015 are enclosed herewith and collectively marked as **Annexure F**.

9. The Applicant being aggrieved with the orders dated 4th July, 2015 filed two separate Writ petitions being WP (C) No. 441 of 2016 for wrong assessment made for the tax liability amounting to Rs. 9.29 Crores and the WP (C) No. 1505/2016 for wrong assessment made for the tax liability amounting to Rs. 4.52 Crores in the Hon'ble Gauhati High Court. The Hon'ble Gauhati High Court vide orders dated 3rd February, 2016 and 4th March, 2016 respectively was pleased to direct the respondents to consider the application filed by the Applicant made under Section 39A of Income Tax Act, 1961 and also directed the respondents to take such necessary steps towards adjustment of the assessed refund and interest that may be due to the Applicant from the Assessment Year 1986-87 to Assessment Year 1992-93 and also directed the respondents to make a fresh assessment year in respect of the Assessment Year 2013-14. The Hon'ble Gauhati High Court further directed that until a fresh assessment is made by the respondents for the Assessment Year 2013-14 and Assessment Year 2014-15, order of assessment dated 4th July, 2015 shall not be acted upon. Moreso, in the order dated 4th March, 2016 it is stated that refund of Rs. 4,23,15,716 is available for the Assessment Year 1982-83 to 1992-93. The Copy of the orders dated 3rd February, 2016 and 4th March, 2016 passed by the Hon'ble High Court Gauhati is enclosed herewith and collectively marked as **Annexure G**.

10. It is submitted that till date no claim has been filed by the Respondents before this Hon'ble Tribunal for settlement of any of its dues.

11. It is further submitted that the Agriculture income Tax amounting to Rs.13,74,80,376/- should be extinguished. The Computation of the demand of the Respondent made in tabular form is enclosed herewith and marked as **Annexure H**.

12. Under the circumstances the Applicant prays for necessary orders and/or directions by this Hon'ble Tribunal.

13. The balance of convenience is also in favour of the Applicant and in favour of the orders being passed as prayed for herein.

a) Unless orders as prayed for herein are passed, your Applicant will suffer irreparable prejudice, loss and injury.

b) This application is bonafide and has been made in the interest of justice.

13. Reliefs Sought for:

In view of the facts mentioned above, the Applicant prays for the following reliefs-

i) The demand of the Respondents for Rs.13,74,80,376/- should be extinguished;

ii) The amount of Rs.4,23,15,716/- should be refunded to the applicant against the AY 1982-83 to 1992-93 along with interest;

iii) Any other demand prior to 20th September, 2018 should be extinguished;

iv) Ad-interim order in terms of prayers above;

v) To pass such further order and/or orders as this Hon'ble Tribunal may deem fit and proper;

14. It is has been argued by the learned Counsel of the Petitioner that recently the Hon'ble Supreme Court in the case titled as "***Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors' Civil Appeal No.8129 of 2019 (delivered on 13.04.2021)***" reaffirmed the settled position of law that once the

Resolution Plan is approved by this Hon'ble Adjudicating Authority under Section 31 of the Insolvency & Bankruptcy Code (hereinafter '**I & B Code**') in respect of the corporate debtor, it becomes binding on all the stakeholders (in this case the Operational Creditor/Petitioner, hereinafter '**OC**'). The Hon'ble Supreme Court in Para 95 of the said judgment held as under:

"..... That once a resolution plan is duly approved by the Adjudicating Authority under subsection (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....."

15. Further, Prior to Ghanashyam (supra), the Hon'ble Supreme Court in case titled as '**Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others**' (2020) 8 SCC 531 (famously known as Essar Judgment) settled the position of law and held in para 105 & 107 as under:

"105. Section 31 (1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were"

"107. 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..."

OBSERVATIONS

16. It is observed that

- (1) Recently the Hon'ble Supreme Court in the case titled as "**Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors' Civil Appeal No.8129 of 2019 (delivered on 13.04.2021)**" reaffirmed the settled position of law that once the Resolution Plan is approved by this Hon'ble Adjudicating Authority under Section 31 of the Insolvency & Bankruptcy Code (hereinafter '**I & B Code**') in respect of the corporate debtor, it becomes binding on all the stakeholders (in this case the Operational Creditor/Petitioner, hereinafter '**OC**'). The Hon'ble Supreme Court in Para 95 of the said judgment held as under:

"..... That once a resolution plan is duly approved by the Adjudicating Authority under subsection (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.....”

Prior to Ghanashyam (supra), the Hon’ble Supreme Court in case titled as **‘Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others’** (2020) 8 SCC 531 (famously known as Essar Judgment) settled the position of law and held in para 105 & 107 as under:

“105. Section 31 (1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were”

ORDER

17. **Considering the (a) papers/documents made available before this Bench, (b) the observations made in Para 16 (1) above and the Judgment of the Hon’ble Supreme Court in the cases of “the Committee of Creditors of Essar Steels India Ltd. Vs. Satish Kumar Gupta and others and “Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors’ Civil Appeal No.8129 of 2019 delivered on 13.04.2021, the prayer made in the present IA No.17 of 2021 is accepted that the demand of the Respondents for Rs.13,74,80,376.00 stands extinguished as the Law is settled that once**

the Resolution Plan approved by the Adjudicating Authority becomes binding on all stakeholders and all claims not dealt stand extinguished.

18. **However, the prayer made by the Petitioner for refund of Rs.4,23,15,716.00 along with interest to them for the period AY 1982-83 to 1992-1993 is hereby rejected.**
19. IA No.17 of 2021 [in CP (IB) No.20/GB/2017] stands disposed of with the above observations and directions.

Sd/-

**(H. V. Subba Rao)
(Member (Judicial)
& Adjudicating Authority**

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

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