IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 9421 OF 2022

1. Uttam Galva Metallics Ltd.
2. Mr. Subodh Karmarkar ...**Petitioners**

Versus

1. Assistant Commissioner of Income Tax
2. Union of India ...**Respondents**

Mr. Vikram Deshmukh, *a/w Siddhi Doshi, i/b ALMT Legal, Advocates for the Petitioners.*

Mr. Suresh Kumar, *Advocate for Respondents.*

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE : AUGUST 28, 2024

ORAL JUDGEMENT: (*Per, Somasekhar Sundaresan J.*)

1. Rule. Respondents waive service. Rule is made returnable forthwith with the consent of the parties, taken up for final hearing and disposal.

Impugned Proceedings:

2. This Petition challenges multiple identified notices and

communications in connection with reassessment proceedings ("***Impugned Proceedings***") initiated under the Income-tax Act, 1961 ("***the Act***") by the Revenue against Uttam Galva Metallics Ltd. ("***Petitioner-Assessee***"), a company that has been successfully resolved under a Corporate Insolvency Resolution Process ("***CIRP***") under the Insolvency and Bankruptcy Code, 2016 ("***IBC***").

3. Essentially, the Impugned Proceedings entailed issuance of notices in relation to Assessment Year 2016-17 ("***AY 2016-17***") as under:

i) Section 148 (*Issue of notice where income has escaped assessment*) and;

ii) Section 142(1) (*Inquiry before assessment*);

Resolution of the Petitioner-Assessee:

4. The Petitioner-Assessee was admitted into a CIRP by an order dated July 11, 2018 passed by the National Company Law Tribunal, New Delhi ("***NCLT***"). Various processes under the IBC were undertaken. Eventually, the company came to be resolved pursuant to a resolution plan finalized by the Committee of Creditors, and approved

by the NCLT under Section 31 of the IBC by an order dated May 6, 2020[1]. The resolution plan, as approved by the NCLT, entails a full waiver of all tax and tax-related interest dues pertaining to the period prior to commencement of the CIRP.

5. On March 27, 2021 i.e., well after the resolution plan was approved, the Revenue issued a notice under Section 148 of the Act seeking to initiate reassessment of the Petitioner-Assessee's income for AY 2016-17, on the premise that income chargeable to tax had escaped assessment. On October 26, 2021, the Revenue issued a communication containing reasons for initiating the said reassessment. It was stated that the original assessment of the Petitioner-Assessee had been completed on December 28, 2018 in terms of the loss of Rs.220.25 Crores as returned by the Petitioner-Assessee. Thereafter, the Revenue had conducted survey proceedings against some companies and had reason to believe that dealings by the Petitioner-Assessee with those companies could have led to income in the sum of Rs. 111.28 Crores escaping assessment.

6. On November 19, 2021, the Petitioner-Assessee submitted its

[1] *The record shows that this order was pronounced on April 30, 2020, but delivered on May 6, 2020.*

objections, specifically asserting that after approval of a resolution plan under Section 31 of the IBC, the Petitioner-Assessee had begun on a new slate with all past claims and dues being extinguished in terms of the resolution plan. The Petitioner-Assessee made submissions on the import of Section 31 of the IBC and various case law interpreting the IBC. The Petitioner-Assessee also called upon the Revenue to share the documents and material relating to the sanction of reassessment proceedings, under Section 151 of the Act.

7. Thereafter, on February 15, 2022 the Petitioner-Assessee called for a speaking order on the objections raised by it. On February 18, 2022, the Revenue passed an order, rejecting all the objections raised by the Petitioner-Assessee and asserted that while recovery may be impermissible, prosecution of the erstwhile management and recovery from other persons would still be permissible. On such premise, the Revenue refused to drop reassessment proceedings against the Petitioner-Assessee. Pursuant to such rejection of the objections, the Revenue issued a notice dated March 12, 2022 calling upon the Petitioner-Assessee to furnish various details by March 21, 2022.

8. Being aggrieved by the Revenue persisting with the

reassessment proceedings despite the successful resolution of the Petitioner-Assessee, this Writ Petition has been filed by the Petitioner-Assessee, invoking the writ jurisdiction under Article 226 of the Constitution of India, praying for quashing and setting aside of the Impugned Proceedings including all notices and communications received from the Revenue.

9. The grounds that on which this Petition has been filed are essentially that Section 31 of the IBC explicitly makes the resolution plan binding on the Revenue. The Petitioner-Assessee has also submitted that the law declared by the Supreme Court, interpreting Section 31 of the IBC fully covers the position that the Petitioner-Assessee is in, namely, that a corporate debtor after being resolved, starts with a clean slate and cannot be pursued for past tax claims.

Revenue's Defence of Impugned Proceedings:

10. The Revenue has filed an affidavit in reply dated May 18, 2022 ("***Reply Affidavit***") opposing the Petition. The Reply Affidavit essentially sets out the Revenue's interpretation of the import of the IBC. Effectively, the argument of the Revenue is that once the CIRP came to an end (with the approval of the resolution plan), the

moratorium on initiating and continuing proceedings against the Petitioner-Assessee too came to an end. Therefore, according to the Revenue, the power of the Revenue to continue proceedings against the Petitioner-Assessee would revive. The Revenue quoted from orders of the Supreme Court passed during the course pending CIRP proceedings, when dealing with the import of the moratorium under Section 14 of the IBC, to argue that the approval of the resolution plan can have no bearing on the power of the Revenue to pursue proceedings in relation to past tax claims. The Revenue also argued that there is nothing inconsistent between the IBC and the Act for the non-obstinate provisions in the IBC to have any relevance.

11. On March 28, 2022, a Division Bench of this Court, on a *prima facie* examination of the matter granted *ad interim* relief by restraining the Revenue from taking any further steps, whether coercive or otherwise, in relation to the Impugned Proceedings. Such interim relief has continued till date.

Section 31(1) of IBC and its import:

12. At the outset, it would be necessary to extract the provisions of Section 31(1) of the IBC, since it makes the terms of resolution of

corporate debtors binding on the world at large. They are extracted below:

> *"31. (1) **If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors** under sub-section (4) of section 30 **meets the requirements** as referred to in sub-section (2) of section 30, **it shall by order approve the resolution plan which shall be binding on** the corporate debtor and its employees, members, **creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed**, guarantors and other stakeholders involved in the resolution plan."*
>
> ***[Emphasis Supplied]***

13. Even a plain reading of the foregoing would show that once the Adjudicating Authority (the NCLT) approves the resolution plan, it would be binding on, among others, the Central Government and its agencies in respect of payment of any statutory dues arising under any law for the time being in force. It is now trite law that the effect of resolution of a corporate debtor is that the terms of resolution bind tax authorities and their enforcement actions – a position in law declared in numerous judgments of the Supreme Court. While it is not necessary to extract from a long line of decisions of the Supreme Court to note the effect of approval of the resolution plan under Section 31 of the IBC, as rightly pleaded by the Petitioner-Assessee, the judgment in *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction*

Company Limited[2] (***Ghanshyam Mishra***) comprehensively summaries the import of various judgments on the point. The following extracts from ***Ghanshyam Mishra*** are noteworthy:

> ***64.*** *It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by adjudicating authority is limited to the extent provided under Section 31 of the I&B Code and of the appellate authority is limited to the extent provided under sub-section (3) of Section 61 of the I&B Code, is no more res integra.*
>
> ***65.*** ***Bare reading of Section 31 of the I&B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority****, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30,* ***it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders.*** *Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern.*
>
> ***67.*** ***Perusal of Section 29 of the I&B Code*** *read with Regulation 36 of the Regulations* ***would reveal that it requires RP to prepare an information memorandum containing various details of the corporate debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the corporate debtor****, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons.* ***The details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be contained in the information memorandum.*** *So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them are required to be contained in the information memorandum.*

[2] *(2021) 9 SCC 657*

> *68. All these details are required to be contained in the information memorandum so that the resolution applicant is aware as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the corporate debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approved.*
>
> *[Emphasis Supplied]*

14. ***Ghanshyam Mishra*** went on to deal with amendments made to Section 31 of the IBC to include within its ambit dues owed to the Central Government and its agencies, in the following words:

> *84. It is clear that the mischief which was noticed prior to amendment of Section 31 of the I&B Code was that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by NCLT; on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position that once such a resolution plan was approved by the adjudicating authority, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.*

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.

[Emphasis Supplied]

15. In conclusion, to put matters beyond a pale of doubt, the Supreme Court declared as follows:

Conclusion

102. In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (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.

102.2. The 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 I&B Code has come into effect.

102.3. 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 approval under Section 31 could be continued.

[Emphasis Supplied]

16. It is therefore crystal clear that once a resolution plan is duly approved under Section 31(1) of the IBC, the debts as provided for in the resolution plan alone shall remain payable and such position shall be binding on, among others, the Central Government and various authorities, including tax authorities. All dues which are not part of the resolution plan would stand extinguished and no person would be entitled to initiate or continue any proceedings in respect of any claim for any such due. No proceedings in respect of any dues relating to the period prior to the approval of the resolution plan can be continued or

initiated.

17. In this clear view of the matter, there can be no manner of doubt that the Impugned Proceedings and their continuation against the Petitioner-Assessee are wholly misconceived and untenable. The Impugned Proceedings are essentially reassessment proceedings, and that too of AY 2016-17. Evidently, such proceedings pertain to the period prior to the approval of the resolution plan. The outcome of such proceedings, particularly if adverse to the Petitioner-Assessee, would clearly be in relation to tax claims for the period prior to the approval of the resolution plan. The resolution plan came to be approved on May 6, 2020. Any attempt to re-agitate the assessment for AY 2016-17, evidently and squarely, constitutes pursuit of claims for the period prior to even the initiation of the CIRP. The conduct of such proceedings would be directly in conflict with the law declared in ***Ghanshyam Mishra***, which makes it clear that continuation of existing proceedings and initiation of new proceedings that relate to operations prior to the CIRP are totally prohibited after the approval of the resolution plan. Consequently, nothing in the Impugned Proceedings can legitimately survive.

18. We may mention that a co-ordinate bench of this Court has followed and applied ***Ghanashyam Mishra*** in at least two judgments and that too, in the context of reassessment proceedings, to rule that proceedings initiated by the Revenue in respect of tax for a period prior to the CIRP, cannot be continued. In *Alok Industries Ltd. v. Assistant Commissioner of Income-tax*[3], a Division Bench of this Court held in favour of the Assessee quashing various proceedings for reassessment initiated against a corporate debtor that had undergone a resolution under the IBC. So also, in *AMNS Khopoli Limited v. Assistant Commissioner of Income Tax and Others*[4] (***AMNS Khopoli***) the reassessment proceedings initiated in the facts of that case were quashed and set aside by a Division Bench of this Court. In particular, Paragraphs 15 and 16 of ***AMNS Khopoli*** are noteworthy and are extracted below:-

> *15. In the circumstances, since the Resolution Plan expressively provides that no person shall be entitled to initiate any proceedings or inquiry, assessment, enforce any claim or continue any proceedings in relation to claims so long such result to a period prior to the Effective Date of the Resolution Plan, i.e., 10th November 2022 impugned notices are bad in law.*
>
> *Further, the impugned notices are bad in law also because respondents*

[3] *[2024] 161 taxmann.com 285(Bombay)*

[4] *2024 SCC OnLine Bom 1213*

failed to take into account that after approval of the Resolution Plan by the NCLT, a creditor including the Central Government, State Government or local authority is not entitled to initiate proceedings on the Resolution Applicant, in relation to claims which are not part of the Resolution Plan approved by the NCLT.

Pertinently, respondents had not submitted any claims to the IRP, as required under the Code, despite the public announcement being issued by the IRP, as prescribed under the Code.

16. The impugned notice issued under Section 143(2) of the Act by Respondent No. 1 and the consequential impugned notices issued under Section 142(1) of the Act by Respondent No. 2 and all subsequent communications issued by Respondent No. 2 pursuant to the aforementioned impugned notices are bad in law since assessment and inquiry under the Act is sought to be initiated in gross violation of provisions of the Code in as much as it relates to a period prior to the Effective Date.

[Emphasis Supplied]

Conclusion:

19. The aforesaid position in law squarely applies to the facts of the instant case, and necessitates quashing the Impugned Proceedings. Evidently and admittedly, the reassessment proceedings pre-date the CIRP. They would relate to the period prior to the approval of the resolution plan of the Petitioner-Assessee, and therefore stand

extinguished. This is why the Supreme Court has clearly ruled that initiation and continuation of proceedings relating to the period prior to the approval of the resolution plan cannot be indulged in. Upon completion of the CIRP, the Petitioner-Assessee has completely changed hands and has begun on a clean slate under new ownership and management.

20. Consequently, all the notices and communications issued by the Revenue in connection with the Impugned Proceedings, and the consequential actions as impugned in this Writ Petition are hereby quashed and set aside in terms of prayer clauses (a), which, for felicity, is extracted below:-

> *(a) That this Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus under Article 226 of the Constitution of India directing the Respondents to forthwith cancel and withdraw (i) the first impugned notice dated 27th March 2021 issued by Respondent No.1 to the Petitioner under Section 148 of the Income Tax Act for AY 2016-17 and (ii) the second impugned notice dated 12th March 2022 issued by Respondent No.1 to the Petitioner under Section 142(1) of the Income Tax Act for AY 2016-17 as well as for closing of all proceedings against the Petitioner No.1;*

21. Rule is made absolute in the aforesaid terms and the writ petition is ***disposed of*** accordingly.

22. Needless to say, any pending interim application taken out in the writ petition, too would stand disposed of. No costs.

[SOMASEKHAR SUNDARESAN, J.] **[G. S. KULKARNI, J.]**