



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO. 1874 of 2024

Maha Mineral Mining and Benefication Private
Limited, through its authorised signatory,
having its office at 7th Floor, B-Wing,
Shriram Shyam Tower, Near NIT,
Kingsway, Nagpur-440 001. ...

PETITIONER

Versus

Gram Panchayat, Gowari,
through its Secretary, having its office
at Gram Panchayat Gowari, Tehsil-Rajura,
District Chandrapur, Maharashtra. ...

RESPONDENT

Mr. Aniket S. Dabadghao with Mr. Chaitanya J. Dhruv, Advocates for
petitioner.

Mr. Bhupesh W. Patil, Advocate for respondent.

CORAM :- BHARATI DANGRE AND ABHAY J. MANTRI, JJ.

DATE : 8th OCTOBER, 2024

JUDGMENT (Per BHARATI DANGRE, J.)

1. The petitioner Company, incorporated under the provisions of the Companies Act, 2013 and in the business of coal beneficiation, dedicated to the processing and enhancement of coal, has approached this Court seeking a declaration that the demand notice and the communication issued to it by Gram Panchayat, Gowari, through its Secretary, Tahsil Rajura, District Chandrapur, be quashed and set aside, being arbitrary, as the demand pertain to the dues for the period prior to 2019 i.e. the period prior to the petitioner's acquisition of the assets of the corporate debtor under the Insolvency and Bankruptcy Code, 2016.

A declaration is sought by the petitioner that it is not liable to pay any outstanding tax dues to the Gram Panchayat pertaining to the period prior to its acquisition of the assets of the corporate debtor, Gupta Global Resources Private Limited, under the IBC-2016.

2. We have heard Mr. Aniket Dabadgao along with Mr. Chaitanya Dhruv learned counsel for the petitioner and Mr. Bhupesh Patil, learned counsel for the respondent.

By consent of the respective counsel, the writ petition is taken up for final hearing at the stage of admission and hence we issue ***Rule***, making it returnable forthwith.

3. We have prepared a distillate of the facts placed before us through the petition and the arguments of the respective learned counsel, since the petitioner has disputed the liability to pay the tax dues sought to be recovered by the respondent Gram Panchayat and the bare minimum facts are culled out as below:

(a) Gupta Global Resources Private Limited availed various credit facilities from the banks/financial institutions. However, since it was unable to repay the credit facilities, an application was filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (referred to as 'IBC' for the sake of convenience and brevity) before the National Company Law Tribunal, Mumbai (referred to as 'NCLT' for the sake convenience and brevity) for initiation of Corporate Insolvency

Resolution Process (CIRP). The petition was admitted by the NCLT on 04.10.2017 and an Interim Resolution Professional (IRP) was appointed on the very same day.

(b) On appointment of the IRP, by publishing the announcement in two newspapers, commenced the process on 10.10.2017, (i) by intimating the commencement of CIRP against the corporate debtor and (ii) calling upon the creditors to submit proof of claims, setting out the last date of submission of the claims as 21.10.2017.

(c) A copy of the statement of claims submitted by the IRP was published on the website of the Insolvency and Bankruptcy Board of India on 09.03.2021, which included the claims of the State Government Departments like; Sales Tax Department, Income Tax Department, Commercial Tax Department, which was admitted by the IRP.

(d) A Committee of Creditors (CoC) was formed comprising of various financial creditors and the CoC appointed a Resolution Professional to conduct the Corporate Insolvency Resolution Process in accordance with the IBC.

(e) Since no resolution plan was approved in the meetings held by the CoC, the Corporate Insolvency Resolution Process failed and the NCLT by its order dated 28.08.2018 ordered for liquidation of the corporate debtor – Gupta Global Resources Private Limited.

(f) By the order of liquidation passed by the NCLT, a Liquidator was appointed, who as directed, issued a public announcement calling upon proof of claims for various stakeholders of the corporate debtors, on or before 27.09.2018 and this included the claims to be submitted by operational creditors also. Admittedly, no claim was submitted by the respondent-authority before the Liquidator for the alleged recovery of the tax in terms of Maharashtra Village Panchayat Act, 1959, though the departments of the State Government including the Sales Tax, the Income Tax staked their claims before the Liquidator which came to be admitted.

The claims received were once again published on the website of the Insolvency and Bankruptcy Board of India on 29.03.2022.

(g) In terms of Section 36 of the IBC, a Liquidator took the possession of the assets of the company Gupta Global Resources Private Limited, including the washery in question for sale through e-auction on as is where is basis and the Liquidator called for sale of set of assets collectively on slump sale basis through public announcement on 15.05.2019.

(h) During the auction held on 03.06.2019, the petitioner placed the highest bid and emerged as the successful bidder.

The Liquidator issued a letter of intent in favour of the petitioner and called upon it to deposit amount towards sale consideration and pursuant thereto, the sale certificate was issued in

favour of the petitioner on 31.08.2019.

4. It is in the above facts, the petitioner has pleaded that the property in question upon which the respondent has sought to impose and recover purported tax, more particularly described in Schedule 6 of the Sale Certificate executed by the Liquidator in favour of the petitioner, it was specifically expressed in Clause 6, that the sale and transfer of the assets of Gupta Global Resources Private Limited, including the washery, shall remain free from all encumbrances and shall be free from payment of any levies, taxes or dues levied on the assets of Gupta Global Resources Private Limited.

It is the case of the petitioner that after execution of the Sale Certificate, it acquired the property and the act of the respondent in levying tax upon it, is unsustainable as during the entire Corporate Insolvency Resolution Process (CIRP) and the subsequent liquidation proceedings of Gupta Global Resources Private Limited, the respondent though a creditor, failed to submit its claim for recovery of taxes, under the provisions of the Maharashtra Village Panchayat Act, 1959.

5. The learned counsel for the petitioner has taken us through the scheme of the IBC and highlighted the position of the respondent in the context of an operational creditor of Gupta Global Resources Private Limited and in the legal framework, by inviting our

attention to the actions of the respondent for recovery of the alleged dues, he would invite our attention to Section 124 of the Maharashtra Village Panchayat Act, 1959, which is a power of a Gram Panchayat to levy taxes on buildings & lands and in terms whereof the tax can be collected by issuing demand notice.

According to the petitioner, the Gram Panchayat, Gowari, exercising this power had assessed and revised the tax levied on Gupta Global Resources Private Limited, the erstwhile owner of the washery in question, and determined the tax due and payable to be Rs.1,46,954.42 (Rs.One Lakh Forty Six Thousand Nine Hundred and Fifty Four) and issued a demand notice on 15.06.2012 calling upon the Company to pay an amount of Rs.4,40,863.26 (Rs. Four Lakhs Forty Thousand Eight Hundred Twenty Three and Twenty Six Paise) towards the tax dues for the period from 2010-11 to 2012-13, spanning over three financial years. However, the Company failed to discharge its burden and in fact, the respondent did not take any step to recover its dues by initiating any procedure against it nor did it stand in queue when the notification was issued under the IBC, initially by inviting claims from the creditors as per public announcement dated 10.10.2017 and subsequently even when the liquidation proceedings progressed.

6. The learned counsel in this background would submit that when Gupta Global Resources Private Limited underwent liquidation

proceedings, pursuant to the order passed by the NCLT, and the assets of the Company were put up for sale through e-auction on, 'as is where is basis', the process being conducted by the Liquidator appointed by the NCLT, the petitioner acquired the washery and the assets of the Company vide the Sale Certificate dated 31.08.2019. During the entire acquisition process, no claim or liability pertaining to the purported tax dues owed to the respondent under the Maharashtra Village Panchayat Act 1959 as indicated in the demand notice or any other dues were brought in the approved resolution plan or liquidation proceedings by sale of assets and the petitioner was completely unaware of such dues.

However, only after the sale and acquisition of the assets on 25.09.2021, the petitioner received a notice from the respondent seeking to recover an amount of Rs.36,25,400/- (Rs.Thirty Six Lakhs Twenty Five Thousand and Four Hundred) towards tax dues under the Maharashtra Village Panchayat Act, 1959 for the period from 2013-14 to 2021-22.

It is the specific case of the petitioner that this demand is affecting the rights of the petitioner which it had acquired during the liquidation process undertaken under the IBC-2016 and when the respondent has failed to lodge its claim before the Liquidator, the petitioner is not duty bound to satisfy the demand as regards the tax payable before acquisition of the assets by the petitioner.

It is the specific case of the petitioner that the respondent has continued to persist with its unlawful action by disregarding sanctity of the process adopted under the Insolvency and Bankruptcy Code 2016 and once again on 31.12.2023 raised a demand of Rs.47,05,868/- (Rs.Forty Seven Lakhs Five thousand Eight Hundred Sixty Eight) by the demand notice dated 31.12.2023 demanding tax from 2019 to 2024, despite the fact that the amount never formed a part of the claim submitted in the Corporate Insolvency Resolution Process or the subsequent liquidation proceedings of Gupta Global Resources Private Limited.

7. We have perused the writ petition which is accompanied with the orders passed by the NCLT, Mumbai Bench, from time to time, when the Gupta Global Resources Private Limited approached NCLT for initiation of the Corporate Insolvency Resolution Process, and when it disclosed that a sum of Rs. 401.92 Crores was raised as loan from various financial institutions and a sum of Rs.342.11 Crores is in default as on 15.07.2017, the amount payable to different operational creditors.

While admitting the petition filed by the corporate debtor, the interim resolution professional was appointed to carry out the process under the IBC.

Pursuant to the entire process being carried out, which included the formation of CoC and the steps taken thereof under the IBC, our attention is invited to the Sale Certificate issued in favour of the petitioner, Clause 6 of which specifically contain the following stipulation:

“6. That in accordance with the provision of the Insolvency & Bankruptcy Code, 2016 and the Rules made thereunder r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the sale/transfer shall remain free from encumbrances and also free from payment of Non-Agricultural Assessment, Corporation Taxes, Cesses, Electricity and Water Charges, Society’s Dues duties, levies levied on assets of Gupta Global Resources Private Limited (in Liquidation).”

8. It is not in dispute that the respondent as an operational creditor of Gupta Global Resources Private Limited, had a statutory obligation under the IBC to submit its claim, if any, during the Corporate Insolvency Resolution Process and the liquidation proceedings.

The respondent do not deny that no such claim was ever submitted. The respondent having failed to fulfill this obligation mandated by the IBC, thus resulted in extinguishing of its claim, even if it existed.

In the Scheme of the IBC-2016, Section 18 stipulates that the interim resolution professional shall receive and collate all claims submitted by the creditors pursuant to the public announcement.

Section 15 contemplates that the public announcement shall require submission of claim before the IRP within a period of 14 days and in the present case, though the IRP issued public notice on 10.10.2017, despite being an operational creditor, to whom taxes were due and payable under the Maharashtra Village Panchayat Act, 1959, the respondent-Gram Panchyat failed to submit any claim, regarding such outstanding dues within the stipulated period. Thereafter when the corporate debtor went into liquidation, Section 38 made it imperative for the Liquidator to consolidate the claims and issue public announcement for submission of the claim within 30 days. The Liquidator also gave/issued public notice on 30.08.2018 requiring the claims to be submitted but the respondent failed to raise any claim even at this time before the Liquidator.

The liquidation process moved ahead and the petitioner acquired the assets, in due process and now the respondent want to stake its claim for recovery of the amount of tax outstanding and payable to it by the corporate debtor but once the petitioner has acquired the assets of the corporate debtor, the claims, if any, which were not raised, stand extinguished and the respondent cannot now seek to recover those claims from the petitioner, who acquired the assets of the corporate debtor through auction process under the IBC.

We have also noted that the Clause 6 of the sale certificate has conferred the property upon the petitioner free of encumbrances and

free from payment of any tax, cess, charges, duty levied on the assets and we find substance in the argument of the learned counsel for the petitioner that the action of the respondent in seeking to recover the outstanding tax due to it under the Maharashtra Village Panchayat Act, 1959 payable before the initiation of CIRP cannot be sustained. The petitioner who acquired the assets of Gupta Global Resources Private Limited through the liquidation process in the year 2019 has received the sale certificate on 31.08.2019 and therefore, it is unflappable that the respondent can recover its outstanding dues payable before this date.

The Scheme under the IBC, definitely do not permit such an action.

9. Perusal of the scheme under the IBC and in particular Section 31, clearly prescribe that the resolution plan shall be binding on the Central Government, State Government or any local authority to whom a debt in respect of payment of dues arise under any law for the time being in force and the retrospective applicability of 2019 amendment to Section 31 is upheld by the Apex Court in the case of *Ghanshyam Mishra & Sons Pvt Ltd vs. Edelweiss Asset Reconstruction Company Ltd [(2021) 9 SCC 657]*. The Apex Court has categorically held that the amendment is clarificatory and declaratory in nature and it would apply retrospectively even in relation to pending proceedings and to the dues owed prior to the amendment.

Failure of the respondent to submit its claim during the corporate insolvency resolution process of Gupta Global Resources Private Limited, stands extinguished and so is the right to recover the claim. It is not permissible for anyone to by-pass the Code by trying to recover the amount as the respondent never stood in the queue before the IBC proceedings as a creditor.

10. In *Ghanshyam Mishra* (supra), the provisions of the IBC-2016 received a thread bare interpretation and in particular Section 31 before and after its amendment by Act No.26 of 2019, by categorically concluding that once the 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, State Government or any local authority, guarantors and other stakeholders.

In clear terms the verdict record that on the date of approval of the resolution plan by the adjudicating authority, all such claims, which are not part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim, which is not part of the resolution plan.

11. One of the dominant object of the IBC is to see to it that an attempt is made to revive the corporate debtor and make it a running

concern and since it contemplate that the resolution applicant has to prepare a resolution plan on the basis of the information, memorandum and which is expected to provide for the payment of insolvency resolution process costs, implementation and supervision resolution plan, once such a plan is approved, it shall bind to one and all.

The conclusion derived by the Lordships of the Apex Court in para 102.1 of the decision debars the respondent from opening up the process, since it never staked its claim during the proceedings under IBC-2016 and therefore, the claim stands extinguished, since it never formed part of resolution plan and therefore, the respondent is not entitled to recover any dues for the period prior to the date on which the adjudicating authority granted its approval and permission to the liquidation process and the sale certificate was issued to the petitioner.

12. Though we are convinced to quash and set aside the demand notices, as regards the liability to be discharged by the corporate debtor prior to the acquisition of its assets by the petitioner, by following due process under the IBC-2016, we must clarify that, if the petitioner has operated its unit within the jurisdiction of the respondent, pursuant to its acquisition, and if any tax is due and payable subsequent thereto, the petitioner shall discharge its liability to that effect.

Our attention is invited to the order dated 18.03.2024 when the petitioner made a statement that he is willing to deposit sum of Rs.7,00,000/- (Rs. Seven Lakhs) towards discharge of liability of local tax body for the period subsequent to the purchase of the property from the Liquidator.

We are informed that in accordance with the said statement, the petitioner has deposited an amount of Rs.7,00,000/-(Rs. Seven Lakhs) with the respondent-Gram Panchayat, Gowari. We permit the Gram Panchayat to adjust the said amount deposited, towards the tax due and payable subsequent to the acquisition of the property and the petitioner has in particular expressed no objection for the same.

13. With the aforesaid observations the rule is made absolute in terms of prayer clause (a), (b) and (c) which reads below:

(a) Hold and declare that the demand notice dated 31.12.2023(Annexure-M) and communication dated 12.01.2024 (Annexure-N) issued by respondent to the petitioner is bad in law, arbitrary and violative of Article 14 of the Constitution of India in so far as demand for dues pertaining to the period prior to 2019 i.e. period prior to the petitioner's acquisition of the assets of corporate debtor under the Insolvency and Bankruptcy Code, 2016;

(b) Hold and Declare that the petitioner is not liable to pay any outstanding tax dues to the respondent pertaining to the period prior to the petitioner's acquisition of the assets of corporate debtor under the Insolvency and Bankruptcy Code,

2016;

(c) Issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned demand notices dated 31.12.2023(Annexure-M) and communication dated 12.01.2024 (Annexure-N) issued by the respondent seeking to illegally recover tax dues pertaining to period prior to 2019 i.e. period prior to the petitioner's acquisition of the assets under the Insolvency and Bankruptcy Code, 2016.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE , J.)

Andurkar.