

**IN THE HIGH COURT FOR THE STATE OF TELANGANA: HYDERABAD**

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**WRIT PETITION No.24895 of 2023**

Between:

Sujana Universal Industries Limited.

Petitioner

VERSUS

The Union of India represented  
by its Secretary and Ors.

Respondents

**ORDER PRONOUNCED ON: 11.03.2024**

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HON'BLE SRI JUSTICE N.TUKARAMJI**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : **Yes**

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**P.SAM KOSHY, J**

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**N.TUKARAMJI, J**

**\* THE HON'BLE SRI JUSTICE P.SAM KOSHY  
AND  
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! Counsel for Petitioner(s) : Mr. M.Naga Deepak

^Counsel for the respondent(s) : Mr. Vihay K.Punna

<GIST:

> HEAD NOTE:

? Cases referred

1) (2021) 9 SCC 657

2) 2022 SCC OnLine TS 130

3) (2000) 5 SCC 694

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**  
**AND**  
**THE HON'BLE SRI JUSTICE N.TUKARAMJI**  
**WRIT PETITION No.24895 of 2023**

**ORDER** : *(per Hon'ble Sri Justice P.SAM KOSHY)*

The present writ petition has been filed seeking for issuance of a Writ of Mandamus for setting aside the impugned order dated 10.04.2023 (Annexure P1) passed by respondent No.2 under clause(d) of Section 148A of the Income Tax Act, 1961 (for short, 'the Act') for the assessment year 2019-2020.

**2.** Heard Mr. M.Naga Deepak, learned counsel for the petitioner and Mr. Vijhay K.Punna, learned Senior Standing Counsel for Income Tax appearing for respondents.

**3.** The brief facts relevant for adjudication of the present writ petition are that the petitioner establishment namely M/s.Sujana Universal Industries Limited filed a company petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, before the National Company Law Tribunal, Hyderabad Bench, Hyderabad (briefly referred to hereinafter as 'NCLT') which was registered as C.P. (IB) No.186/9/HDB/2019. The said company petition stood admitted and proceedings for Corporate Insolvency Resolution Process (CIRP) was initiated. One Mr. Nethi Mallikarjuna Setty was

appointed as the Resolution Professional to oversee the Corporate Insolvency Resolution Process. In the process, a Committee of Creditors (CoC) was constituted to *inter alia* evaluate the resolution plans received in respect of the Corporate Insolvency Resolution Process of the petitioner and public announcements were made and Expression of Interest (EoI) from entities interested in submitting resolution plans were invited.

**4.** M/s.Triterras Holdings Pte. Limited and M/s.Invent Assets Securitization and Reconstruction Pvt. Ltd. was the successful bidder and their resolution plan was accepted and approved by the Committee of Creditors vide order dated 24.12.2020 in I.A.No.868 of 2020 in C.P. (IB) No.186/9/HDB/2019. By virtue of the resolution plan approved by the NCLT, M/s.Triterras Holdings Pte. Limited and M/s.Invent Assets Securitization and Reconstruction Pvt. Ltd. took over the management and control of the affairs of the petitioner establishment and stepped into the shoes of the petitioner in the course of taking over the management.

**5.** According to the learned counsel for the petitioner, once when the resolution plan stood approved by the NCLT and the successful resolution applicant i.e. M/s.Triterras Holdings Pte. Limited and M/s.Invent Assets Securitization and Reconstruction Pvt. Ltd. having taken over the management including its

management and control, the authorities concerned could not have issued any further notices in respect of any further liability which till then was not claimed or raised. M/s.Triterras Holdings Pte. Limited and M/s.Invent Assets Securitization and Reconstruction Pvt. Ltd. the successful resolution applicant had taken over the petitioner establishment on a clean slate basis. All earlier liabilities other than those which are reflected in the resolution plan stands extinguished.

**6.** In terms of the resolution plan so far as the liabilities of the corporate debtor i.e. the petitioner is concerned, it was in the plan itself envisaged as under:

“(viii) Any process initiated against the Corporate Debtor by any entity including the Financial Creditors of the Corporate Debtor under any of the applicable laws including with respect of declaration of the Corporate Debtor as a wilful defaulter in terms of the applicable guidelines / circulars of the Reserve Bank of India, shall stand withdrawn. Further, the Financial Creditors shall ensure that the Corporate Debtor shall not be declared / classified or continue to be classified as a wilful defaulter, with effect from the NCLT Approval Date.

(ix) That, pursuant to Section 32A of the IBC, all existing legal proceedings including those under the PMLA Act, 2002 initiated in relation to the Company shall stand extinguished from and on the NCLT Approval Date. Further, the approval of this Plan shall protect the assets of the Corporate Debtor from any future liability on account of past actions of the erstwhile promoters of the Corporate Debtor including any distress in the nature of attachment, sale, etc. levied on the assets of the Corporate Debtor in terms of the PMLA Act.”

**7.** In clause 3.3.1 it has been envisaged as under:

“Pursuant to payment of the aforementioned Operational Creditors under the Resolution Plan, the Company shall have no Liability towards the said Operational Creditors with regard to any claims (as defined under the IBC) relating in any manner to the period prior to the NCLT Approval Date. All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled, with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the said Operational Creditors (whether by way of guarantee, bank guarantee, letters of credit or otherwise) shall immediately, irrevocably and unconditionally stand released and discharged, and the said Operational Creditors shall deem to have waived all rights to invoke or enforce the same.”

**8.** In clause 3.3.3 it has been envisaged as under:

“Pursuant to the foregoing, any and all legal proceedings (including any notice, show cause, adjudication proceedings, assessment proceedings, regulatory orders, etc.) initiated before any forum by or on behalf of any Operational Creditor to enforce any rights or claims against the Company shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/or extinguished, and the Operational Creditors shall deem to have taken all necessary steps to ensure the same. The Operational Creditors of the Company shall have no further rights or claims against the Company (including but not limited to, in relation to any past breaches by the Company), in respect of the period prior to the NCLT Approval Date, and all such claims shall immediately, irrevocably and unconditionally stand extinguished.”

**9.** In clause 3.3.3 it has been envisaged as under:

“(ii) In the event any person that has any claim(s) against the Company (including Financial Creditors, Operational Creditors, Other Creditors, Governmental Authorities, or otherwise), has not submitted its claim(s) (whether or not it was aware of such claim at such time), or if the claim(s) filed by any person has been rejected and/or not been admitted by the Resolution Professional, then: (a) all such obligations, claims and liabilities of the Company (whether final or contingent (whether crystallized or not), whether disputed or undisputed, and whether or not notified to or claimed against the Company); (b) all outstanding disputes or legal

proceedings in respect of such claims; and (c) all rights or claims of such persons against the Company; in each case, relating to the period prior to the NCLT Approval Date, shall immediately, irrevocably and unconditionally stand extinguished and waived on the NCLT Approval Date, and the Company shall have not Liabilities in respect of such claim(s).”

**10.** Dealing with all ongoing and new litigations, in clause 3.16 it has been held as under:

“By virtue of the order of the Adjudicating Authority approving this Resolution Plan, new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the NCLT Approval Date or arise on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, against the Company or any of its employees or directors who are appointed or who remain in employment or directorship after the acquisition of the Resolution Plan. It is hereby clarified that the Company or the Resolution Applicants shall at no point of time, directly or indirectly, held responsible or liable in relation thereto.”

**11.** Dealing with the dues of creditors during the Corporate Insolvency Resolution Process, it has been held as under:

“The Resolution Plan has been made on the assumption that all dues incurred by the Resolution Professional (on behalf of the Company) during the CIRP have been or will be paid. Therefore, except for CIRP Costs and unless otherwise specified in this Resolution Plan, any liabilities and/or claims that arise between the Insolvency Commencement Date and the NCLT Approval Date, pursuant to the NCLT Approval Order.”

**12.** Dealing with unspecified liabilities and claims, in clause 3.18 it has been held as under:

“All other liabilities of SUIL, including but not limited to contingent liabilities, statutory liabilities, customer claims, supplier claims, guarantor dues/ claims, duties, responsibilities and all other obligations of any nature whatsoever and all dues payable to the other creditors, including any claims or demands or liabilities in connection with or against SUIL, whether under Applicable Law, equity or contract, whether admitted or not, due or contingent, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Information Memorandum/virtual data room, the balance sheet or the books of accounts of the Corporate Debtor, in relation to any period prior to the NCLT Approval Date shall stand extinguished on the NCLT Approval Date, pursuant to the NCLT Approval Order.”

**13.** Learned Senior Standing Counsel for Income Tax appearing for the respondents on the other hand submits that since the notice under Section 148 of the Act and the proceedings drawn there under on in respect of the assessment year 2019-2020 i.e. prior to the approval of the resolution plan, it cannot be said that the proceedings drawn by the authorities concerned to be bad in law. It was further contended that the order is also an appealable order and for this reason also the present writ petition deserves to be rejected.

**14.** Having heard the learned counsel for the parties, it would be relevant at this juncture to take note of the decision of the Hon'ble Supreme Court in the case of **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company**



**Limited and Ors**<sup>1</sup> where the Hon'ble Supreme Court considering the consequences that arises pursuant to the order of the NCLT in a proceeding under Insolvency and Bankruptcy Code, 2016 in paragraph No.9 held as under:

“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 that the resolution plan as approved by CoC meets the requirements as referred to in subsection (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.

66. The resolution plan submitted by successful resolution applicant is required to contain various provisions, viz., provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in subsection (1) of section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who did not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with subsection (1) of section 53 in the event of a liquidation of the Corporate Debtor. Explanation 1 to clause (b) of subsection (2) of Section 30 of the I&B Code clarifies for the removal of doubts, that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the Corporate Debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (3) of subsection (2) of Section 30 of I&B Code also casts a duty on RP to examine, that the resolution plan does not contravene any of the provisions of the law for the time being in force.

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

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<sup>1</sup> (2021) 9 SCC 657

an information memorandum containing various details of the Corporate Debtor so that the resolution applicant submitting a plan is aware of the 63 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 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.

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 subsection (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 the should start with fresh slate on the basis of the resolution plan approved.

69. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Singatory (supra).

“107. For the same reason, the impugned NCLAT judgment [Standar Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] 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 65 this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would 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 by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

70. In view of this legal position, we could have very well stopped here and held, that, the observation made by NCLAT in the appeal filed by EARC to the effect, that EARC was entitled to take recourse to such remedies as are available to it in law, is impermissible in law.

71. As held by this Court in the case of Pr. Commissioner of Income Tax vs. Monnet Ispat and Energy Ltd.<sup>10</sup>, in view of provisions of Section 238 of I&B Code, the provisions thereof will have an overriding effect, in there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law. As such, the observations made by NCLAT to the aforesaid effect, if permitted to remain, would frustrate the very purpose for which the I&B Code is enacted.

72. However, in Civil Appeal arising out of Special Leave Petition (Civil) No.11232 of 2020, Writ Petition (Civil) No.1177 of 2020 and Civil Appeals arising out of Special Leave Petition (Civil) Nos.71477150 of 2020, the issue with regard to the statutory claims of the State Government and the Central Government in respect of the period prior to the approval of resolution plan by NCLT, will have to be considered.

73. Vide Section 7 of Act No.26 of 2019 (vide S.O.2953 (E), dated 16.8.2019 w.e.f 16.8.2019), the following words have been inserted in Section 31 of the I&B Code. “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”

74. As such, with respect to the proceedings, which arise after 16.8.2019, there will be no difficulty. After the 67 amendment, any debt in respect of the payment of dues arising under any law for the time being in force including the ones owed to the Central Government, any State Government or any local authority, which does not form a part of the approved resolution plan, shall stand extinguished.

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79. In the Rajya Sabha debates, on 29.7.2019, when the Bill for amending I&B Code came up for discussion, there were certain issues raised by certain Members, the Hon’ble Finance Minister stated thus:

“IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC.

There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would be proceeded against individuals and not company. There will be no criminal proceedings against successful resolution applicant. There will be not criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the hon. Members to recognize this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear.

(emphasis supplied)”

**15.** Likewise, the Division Bench of this High Court in the case of **Sirpur Paper Mills Limited and Another vs. Union of India and Others<sup>2</sup>** under somewhat similar circumstances relying upon various decisions on the subject matter in paragraph No.56 to 60 has held as under:

“**56.** In *Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co<sup>3</sup>*, Supreme Court has held that income tax dues being in the nature of crown debts do not take precedence over secured creditors who are private persons. It has been explained that the Crown’s preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. Thus, the common law doctrine of priority of Crown debts would not extend to providing preference to Crown debts over secured private debts.

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<sup>2</sup> 2022 SCC OnLine TS 130

<sup>3</sup> (2000) 5 SCC 694

**57.** Following the above, Delhi High Court in Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Limited, (2017) SCC OnLine Delhi 12759, disposed of the Income Tax Appeals filed by the Revenue in view of admission of insolvency resolution application by the Tribunal against the assessee which prohibited institution of suits or continuation of pending suits or proceedings against the assessee. It was held that the above prohibition would cover the appeals filed by the Revenue against orders of the Income Tax Appellate Tribunal in respect of the tax liability of the assessee. While disposing of the appeals as such, liberty was granted to the Revenue to revive the appeals subject to further orders of the Tribunal. This order of the Delhi High Court has been affirmed by the Supreme Court in Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Limited (1 supra). Supreme Court has held that in view of Section 238 of IBC, it is obvious that it will override anything inconsistent contained in any other enactment including the Income Tax Act. Reference was made to its earlier decision in Dena Bank case (4 supra).

**58.** Supreme Court in Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta (3 supra) was examining various questions as to the role of resolution applicants, resolution professionals, committee of creditors and jurisdiction of the adjudicating authority. Adverting to Section 31 (1) of the IBC, it has been held that once a resolution plan is approved by the committee of creditors, it shall be binding on all the stakeholders including guarantors. Explaining the rationale behind this, it is stated that this is to ensure that the successful resolution applicant starts running the business of corporate debtor on a fresh slate as it were. Elaborating further, it has been held that 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 throwing into uncertainty amounts payable by a prospective resolution applicant. It has been explained as under:

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 takes 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.

**59.** Finally in Ghanashyam Mishra case (5 supra) the question before the Supreme Court was as to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by the adjudicating authority under Sub-Section (1) of Section 31 of IBC? The further question before the Supreme Court was as to whether after approval of the resolution plan by the adjudicating authority, a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceeding for recovery of dues from the corporate debtor which are not part of the resolution plan approved by the adjudicating authority?

**60.** After elaborate discussion, Supreme Court held that any debt in respect of payment of dues arising under any law for the time being in force including the ones owed to the Central Government or any State Government, or any local authority which does not form a part of the approved resolution plan shall stand extinguished. Clarifying further it has been held that once a resolution plan is approved by the adjudicating authority, all such claims/dues owed to the State/Central Government or any local authority including the tax authorities who were not part of the resolution plan shall stand extinguished. It has been held as follows:

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

(i) 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;

(ii) x x x x

(iii) 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.”

**16.** In view of the aforesaid facts and circumstances of the case, we are of the considered opinion that in the light of the authoritative judicial pronouncements referred to in the preceding paragraphs by the Hon’ble Supreme Court in the case of **Ghanshyam Mishra and Sons Private Limited** (supra) and also this High Court in the case of **Sirpur Paper Mills Limited and Another** (supra), read with the order passed by the NCLT in I.A.No.868 of 2020 in C.P. (IB) No.186/9/HDB/2019 dated 24.12.2020, the impugned order dated 18.04.2023 for the assessment year 2019-2020 deserves to be and is accordingly set aside/quashed.

**17.** In the result, the writ petition stands allowed. However, there shall be no order as to costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

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**P.SAM KOSHY, J**

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**N.TUKARAMJI, J**

Date: 11.03.2024

**Note: LR copy to be marked: Yes**

B/O. GSD