

# Bhushan Power And Steel Limited vs Municipal Corporation Of Delhi & Anr on 8 April, 2024

**Author: Sachin Datta**

**Bench: Sachin Datta**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.(C) 4321/2024 and CM APPL.17715/2024  
BHUSHAN POWER AND STEEL LIMITED

Through: Mr. Gopal Jain, Sr.  
Mr. Chandra Shekhar  
Nilotpall Sharma, Mr.  
Yadav, Mr. Gauransh  
and Mr. Harshit Bha

versus

MUNICIPAL CORPORATION OF DELHI & ANR....  
Through: Mr. Tushar Sannu,  
Manoviraj Singh, A

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA  
ORDER

% 08.04.2024 W.P.(C) 4321/2024 and CM APPL.17715/2024

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner seeking issuance of a writ of Certiorari quashing the impugned Common Assessment Order No. TAX/CNZ/ 2024.2426 dated 02.03.2024 under Section 123D of DMC Act, 1957 passed by the respondent/MCD demanding property tax in respect of Flat Nos. 101-112, F-Block, International Trade Tower, Nehru Place, New Delhi-110019 (to the extent it relates to Flat Nos. 109 to 112 owned by the Petitioner); and issuance of a writ of Mandamus directing the respondents not to raise any demand towards the property tax in respect of the said flats owned by the petitioner for the period prior to 26.03.2021, which, according to learned counsel for the petitioner, is the "effective date" in respect of the resolution This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 11/04/2024 at 20:45:10 plan approved by the NCLT and NCLAT qua the petitioner. It is also sought that a fresh demand be raised for the period w.e.f. 27.03.2021 only in respect to the flats owned by the petitioner i.e. Flat Nos. 109 to 112.

2. The background of the matter is that in 2017, the petitioner underwent Corporate Insolvency Resolution Process („CIRP "); in the said process JSW Steel Ltd. submitted a resolution plan which

was approved by Committee of Creditors under Section 30(4) of Insolvency & Bankruptcy Code, 2016 („IBC ). The National Company Law Tribunal (NCLT) has approved the said plan under Section 31 of the IBC vide order dated 05.09.2019 in CP (IB) 202(PB)/2017. The said resolution plan was confirmed by the National Company Law Appellate Tribunal vide Order dated 17.02.2020 in Company Appeal (AT) (Insolvency) No. 957 of 2019. In term of Section 31(1) of the IBC, the said resolution plan became binding on all the stakeholders 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, or to whom any statutory dues are owed.

3. It is submitted by the petitioner that in terms of the aforesaid resolution plan [as provided in Part B, Financial Proposal, Clause 1.6(v.)], all liabilities and obligations of the petitioner in relation to outstanding government dues prior to the effective date i.e. 26.03.2021 stand written off in full and are deemed to have been permanently extinguished.

4. Learned senior counsel for the petitioner submits that any demand raised by the respondents for the period prior to effective date of the resolution plan i.e. 26.03.2021, is deemed to have been extinguished under Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is This is a digitally signed order.

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i. Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531;

ii. Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657;

iii. Ruchi Soya Industries Ltd. v. Union of India, (2022) 6 SCC 343;

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5. Learned standing counsel for the MCD/respondents relies upon the reasoning contained in the impugned Common Assessment Order dated 02.03.2024, which inter alia reads as under:

"9) With due regard to the confirmation order dated 17.02.2020 by Hon'ble NCLAT regarding Resolution Plan, as referred to above, it is worthwhile to mention that Delhi Municipal Corporation Act, 1957 is a statute specifically dealing with "taxation" under "Chapter VIII" of the Act and Section 123 of the Act provides that Property Tax is a first charge on premises or the property on which they are assessed. In other words, a property tax is levied on the "property" itself and is recoverable from the "property" itself and whosoever be the owner or occupier of the property is liable to pay such property tax. In case one owner or occupier does not pay property tax and sell off the property without payment of property tax, the said property tax liability automatically transfers alongwith the property and is payable by the successive buyer(s). In case the owner or occupier fails to make the payment of property tax, such tax is recoverable from successive buyers or occupiers as the case may be.

10) As per Sections 123A and 123B of DMC Act, onus to file Self Assessment Property Tax Return (SAPTR) and to pay correct property tax on properties within the jurisdiction of Municipal Corporation of Delhi, lies with the owner I occupier of property. As per available record and also admitted by taxpayer, the taxpayer or the occupier has/have never filed SAPTRs and never paid property tax in respect of present property.

Therefore, as per various sections of DMC Act, the property tax on all properties is assessable and recoverable from "property" itself or the owner or occupier are bound to pay the same. As mentioned above, the Delhi Municipal Corporation Act, 1957 is a statute specifically dealing with "taxation" under Chapter VIII of the Act and any permission / order of Hon'ble NCLAT cannot override the provisions of DMC Act specifically the Sections relating to taxation of a property.

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13} As per demand and collection register, the property stands in the name of M/s Bhushan Steel and Strips Ltd and M/s Bhushan Industries but now M/s. Shushan Power and Steel Ltd. is pursuing the matter. Under section 128(4) of DMC Act, every person who makes a transfer of property continue liable for the payment of all property taxes from time to time payable in respect of the land or building transferred until he gives such notice or until the transfer has been recorded in the Commissioner's book, but nothing in this section shall be held to affect the liability of the transferee for the payment of the taxes."

6. He also relies upon the decision of Supreme Court in Sanjay Kumar Agarwal v. State Tax Officer (2024) 2 SCC 362 and State Tax Officer v. Rainbow Papers Ltd. (2023) 9 SCC 545, and specifically on the following paragraphs of the Rainbow Papers (supra):

"41. Section 31 IBC which provides for approval of a resolution plan by the adjudicating authority makes it clear that the adjudicating authority can approve the resolution plan only upon satisfaction that the resolution plan, as approved by the Committee of Creditors ("CoC"), meets the requirements of Section 30(2) IBC. When the resolution plan does not meet the requirements of Section 30(2), the same cannot be approved.

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48. A resolution plan which does not meet the requirements of sub-section (2) of Section 30 IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a corporate debtor.

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52. If the resolution plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the adjudicating authority is bound to reject the resolution plan.

53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 IBC.

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54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.

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57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) IBC defines "secured creditor" to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of "secured creditor" in IBC does not exclude any Government or Governmental Authority."

7. I have perused the record and heard learned counsel for the parties. Prima facie, there is merit in the submissions advanced by learned senior counsel for the petitioner.

8. In Essar Steel (supra), it has been held as under:

"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 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 out by us hereinabove. For these reasons, Nclat judgment must also be set aside on this count."

9. In Ghanashyam Mishra (supra), it was noticed that the mischief that was sought to be remedied by the legislature by amending Section 31(1) of IBC was that despite the legislative intent to extinguish debts upon approval This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 11/04/2024 at 20:45:11 of the resolution plan, there were instances where State/Central Government authorities continued to pursue proceedings for the recovery of debts owed to them. Relevant extracts of the said judgment are as under:

"78. Perusal of the SOR would reveal that one of the prime objects of the I&B Code was to provide for implementation of the insolvency resolution process in a time-bound manner for maximisation of value of assets in order to balance the

interests of all stakeholders. However, it was noticed that in some cases there was extensive litigation causing undue delays resultantly hampering the value maximisation. It was also found necessary to ensure that all creditors are treated fairly. It was therefore in view of the various difficulties faced and in order to fill the critical gaps in the corporate insolvency framework, it was necessary to amend certain provisions of the I&B Code. Clause (f) of Para 3 of the SOR of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 would amply make it clear that the legislative intent in amending sub-section (1) of Section 31 of the I&B Code was to clarify that the resolution plan approved by the adjudicating authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt is owed in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities.

79. In the Rajya Sabha debates, on 29-7-2019, when the Bill for amending the I&B Code came up for discussion, there were certain issues raised by certain members. While replying to the 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 no criminal proceedings against successful resolution applicant for fraud by This is a digitally signed order.

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(emphasis supplied)

80. It could thus be seen that in the speech the Hon'ble Finance Minister has categorically stated that Section 238 provides that the I&B Code will prevail in case of inconsistency between two laws. She also stated that there was question about indemnity for successful resolution applicant and that the amendment was clearly making it binding on the Government. She stated that the Government will not make any further claim after the resolution plan is approved. So, that is going to be a major sense of assurance for the people who are using the resolution plan. She has categorically stated that she would want all the Hon'ble Members to recognise this message and communicate further that the I&B Code gives that comfort to all new bidders. They need not be scared that the taxman will come after them for the faults of the earlier promoters. She further states that 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.

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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."

10. In *Ghanashyam Mishra (supra)* it has been held as under:

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93. As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The 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 the 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.

\*\*\*\* 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.

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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.

11. In Ruchi Soya (supra), it was found that Government/Revenue did not lodge its claim before resolution professional, after issuance of public notices under Section 13 and 15 of the IBC. Consequently, it was held as under:



"11. Admittedly, the claim in respect of the demand which is the subject- matter of the present proceedings was not lodged by Respondent 2 after public announcements were issued under Sections 13 and 15 IBC. As such, on the date on which the resolution plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the resolution plan, would survive.

12. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the resolution plan, does not survive...."

12. In essence, once a resolution plan is approved by the Adjudicating Authority under Section 31(1) of the IBC, all stakeholders including Central Government, any State Government or any local authority are bound by its terms, and any claims or dues including statutory dues owed to the governmental agencies which are not a part of the approved resolution plan are extinguished; it is impermissible to pursue or initiate proceedings in respect of such dues for the period prior to the "effective date" of the resolution plan.

13. In the present case, the MCD did not lodge its claim in respect of property tax dues against the petitioner during the CIRP. Admittedly, the claim of the MCD is not a part of the approved resolution plan.

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14. The decision of Rainbow Papers (supra) does not detract from the above inasmuch as unlike in the said case, the concerned statutory authority (MCD) did not lodge its claim before the resolution professional during the CIRP initiated qua the petitioner. Further, MCD has not challenged the approval of resolution plan by the Adjudicating Authority.

15. Learned counsel for the respondent has raised other contentions qua the terms/stipulations of the resolution plan, and the "effective date"

thereunder. All these aspects may be suitably highlighted in the reply to be filed by the respondent/s and the same shall be duly taken into account at the time of disposal of the present petition. However, in the light of the legal position as noticed hereinabove, the petitioner has been able to make out a prima-facie case for grant of an ad-interim order.

16. Accordingly, an ad-interim order is passed staying the operation of the impugned Common Assessment Order dated 02.03.2024 (to the extent it relates to Flat Nos. 109 to 112 owned by the

petitioner). However, the petitioner is directed to pay the property tax for the period after 26.03.2021.

17. Let reply be filed by the respondents with a period of four weeks. Rejoinder thereto, if any be filed within a period of two weeks thereafter.

18. List on 25.07.2024.

SACHIN DATTA, J APRIL 8, 2024/hg This is a digitally signed order.

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