*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: April 08, 2024**
Judgment pronounced on: April 15, 2024

\+ **W.P.(C) 15567/2022**

M TECH DEVELOPERS PVT. LTD. ..... Petitioner

Through: Mr. Rohit Tiwari, Ms. Tanya, Ms. Shivani, Mr. Shobhit Tiwari and Mr. Jaind Kumar Jaiswal, Advs.

versus

NATIONAL FACELESS ASSESSMENT CENTRE, DELHI & ANR. ..... Respondents

Through: Mr. Abhishek Maratha, Sr.SC with Mr. Parth Semwal,JSC Ms. Nupur Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

YASHWANT VARMA, J.

1. The petitioner impugns notices issued under Section 144B of the **Income Tax Act, 1961**[1] pertaining to **Assessment Year**[2] 2021-22 dated 27 June 2022 as well as the consequential notices issued under Sections 143(2) and 142(1) of the Act dated 28 June 2022 and 05

[1] Act
[2] AY

September 2022, respectively.

2. The challenge is essentially mounted on the basis of Section 31 of the **Insolvency and Bankruptcy Code, 2016**[3], with the petitioner contending that once the Resolution Plan came to be duly accepted, the bar created in terms of Section 31 of the IBC would apply, and bearing in mind the decision of the Supreme Court in **Ghanashyam Mishra and Sons Pvt. Ltd vs. Edelweiss Asset Reconstruction Company Ltd.**[4], the respondents would stand deprived of the jurisdiction or authority to reopen or assess income for any period prior to the approval of the Resolution Plan.

3. For the purposes of disposal of the instant writ petition, we propose to notice the following salient facts. The proceedings before the **National Company Law Tribunal**[5] commenced upon the filing of a petition under Section 7 of the IBC by one Mr. Debashish Majumdar. The petition came to be admitted on 12 November 2020 and an order of moratorium came into effect from that date. In terms of the statutory scheme of the IBC, the **Corporate Insolvency Resolution Process**[6] would also be deemed to have commenced from the aforesaid date.

4. According to the writ petitioner, the **Resolution Professional**[7] appointed pursuant to the commencement of CIRP, on 23 November 2020, informed the Income Tax authorities of the pendency of proceedings before the NCLT. This was followed by a communication

[3] IBC
[4](2021) 9 SCC 657
[5] NCLT
[6] CIRP
[7] RP

dated 28 January 2021 in terms of which the RP is stated to have conveyed a request to the Income Tax authorities to lodge their claims in accordance with the provisions of the IBC.

5. The petitioner, in terms of the provisions of the Act, furnished its **Return of Income**[8] for AY 2021-22 on 10 March 2022 declaring a net loss of INR 9,47,64,300/-. The CIRP proceedings in the meanwhile culminated in the approval of the Resolution Plan being approved by the NCLT on 15 March 2022 and accepting a plan submitted by M/s Sarthi Constructions which had been accepted by the Committee of Creditors. It is only thereafter and on 27 June 2022 that the respondents chose to commence proceedings referable to Section 144B of the Act.

6. The fact that a Resolution Plan once approved would bring the curtains down on any claims pertaining to a period prior to the approval of the RP is no longer res integra.

7. We note that while dealing with an identical issue, we had in **Ireo Fiverriver Pvt. Ltd. v. Income Tax Department & Anr.**[9] recognized the legal position to be as under: -

> "**3.** It is in the aforesaid backdrop that we take note of the judgment rendered by the Supreme Court in **Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. [**(2021) 9 SCC 657] wherein the following principles came to be laid down:-
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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

[8] ROI
[9] W.P.(C) 12461/2022

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.

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."

4. We also take note of the identical position which was expressed by the Supreme Court in **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta**, [(2020) 8 SCC 531] where the following pertinent observations came to be made:-

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

(2018) 17 SCC 394, this Court relying upon Section 31 of the Code has held:

> "*25.* Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(*e*) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.

106. Following this judgment in *SBI* v. *V. Ramakrishnan*, (2018) 17 SCC 394, it is difficult to accept Shri Rohatgi's argument that that part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile Directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, NCLAT judgment being contrary to Section 31(1) of the Code and this Court's judgment in *SBI* v. *V. Ramakrishnan*, (2018) 17 SCC 394, is set aside.

107. For the same reason, the impugned NCLAT judgment [*Standard 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 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.
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> **5.** In view of the aforesaid principles, the successful resolution applicant cannot be foisted with any liabilities other than those which are specified and factored in the Resolution Plan and which may pertain to a period prior to the resolution plan itself having been approved."

8. The Section 144B power entails proceedings for assessment, reassessment or re-computation being initiated in terms of the faceless procedure of assessment as prescribed therein. Any effort to assess, reassess or re-compute could tend to lean towards a re-computation of liabilities which otherwise stands freezed by virtue of the Resolution Plan having been approved.

9. Such an action or recourse would clearly be barred by Section 31 of the IBC which binds all creditors of the corporate debtor, including the Central and State Governments or any other local authority to whom a debt is owed. A Section 144B action is what the Supreme Court frowned upon and chose to describe as the "*hydra head* " and thus being contrary to the clean slate principle which the IBC advocates. We, consequently, find ourselves unable to sustain the impugned action.

10. Before parting, we also take note of the submission addressed by

Mr. Maratha, who sought to draw sustenance from the judgment rendered by a learned Judge of the Madras High Court in **Dishnet Wireless Ltd. v. Assistant Commissioner of Income Tax (OSD)**[10] wherein it was observed as follows:-

> "**24.** In Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd., [2021] 227 Comp Cas 251 (SC); [2021] 91 GSTR 28 (SC); (2021) 9 SCC 657, the hon'ble Supreme Court also held that (page 289 of 227 Comp Cas): "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 Committee of Creditors 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".
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> **25.** In Ruchi Soya Industries Ltd. referred to supra, this had given liberty to the petitioner therein to obtain a clarification from the National Company Law Tribunal as to whether the plan included customs duty paid by the petitioner therein on the import under the subject bill of entry therein, whereas, in the present case, the documents reveal that the Income-tax was not under the contemplation of National Company Law Tribunal.
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> **xxxx xxxx xxxx**
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> **28.** 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.
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> **29.** The resolution plan submitted on behalf of the petitioners by the Insolvency Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 on May 21, 2019 has not contemplated any concession from the Income-tax Department though notices under Section 148 of the Income-tax Act, 1961 had already been issued during March, 2018.
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> **30.** Corporate Insolvency resolution plan approved under Section 31

[10] 2022 SCC OnLine Mad 3643

of the Insolvency and Bankruptcy Code, 2016 (IBC) did not contemplate tax dues under the Income-tax Act, 1961. Further, at the stage, the proceedings under 148 of the Act, 1961 had not crystallized.

31. The objections of the respective petitioners were also not in the light of the voluntary corporate insolvency resolution proceedings initiated by the petitioners.

32. Since the proceedings under the Code were initiated by the petitioners few days prior to the initiation of the proceedings under Section 148 of the Income-tax Act, 1961, it was incumbent for the petitioners to have ensured proper notice to the Income-tax Department and obtained appropriate concession in Corporate Insolvency Resolution Plan.

33. That apart, claims of the Income-tax Department were not considered by the National Company Law Tribunal, Mumbai, while approving the resolution plan and therefore the question of abetment of such rights of the Income-tax Department cannot be countenanced.

34. The provisions of Insolvency and Bankruptcy Code, 2016 (IBC) cannot be interpreted in a manner which is inconsistent with any other law for the time being in force."

11. Although the judgment of the Supreme Court in *Ghanashyam Mishra* was duly cited in *Dishnet Wireless*, the Madras High Court sought to draw a distinction between voluntary and involuntary insolvency as well as the fact that the Department had not been placed on due notice. The judgment of the Supreme Court in *Ghanashyam Mishra* was sought to be distinguished, with it being observed that the same had not been rendered in the context of voluntary corporate insolvency.

12. With all due respect, we find ourselves unable to sustain that line of reasoning bearing in mind the undisputable legal position which obtains in light of the scheme of the IBC and which fails to incorporate any distinction between voluntary and involuntary corporate

insolvency. As we read the provisions of the Act, the IBC does not erect different levels of protection or insulation dependent upon whether corporate insolvency had been initiated voluntarily or on the basis of a petition referable to Section 7 of the IBC.

13. In our considered opinion, the purport of Section 31 of the IBC stands conclusively settled by the Supreme Court in terms of the judgments rendered in **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta**[11] and *Ghanashyam Mishra* as was noticed by us in *Ireo Fiverriver*. We also bear in mind that upon commencement of CIRP, the petition is duly advertised in terms of the provisions made in Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and which would thus constitute due public announcement. The respondents, therefore, cannot sustain the invocation of Section 144B based on their own failure to lodge a claim within the time stipulated.

14. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and quash the impugned notices dated 27 June 2022, 28 June 2022 and 05 September 2022.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 15, 2024/RW

[11] (2020) 8 SCC 531