

Sales Tax Department, State Of ... vs Raj Oil Mills Limited (Corporate ... on 20 March, 2019

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 205 of 2017

(Arising out of Order dated 2nd August, 2017 passed by the
Adjudicating Authority (National Company Law Tribunal), Hyderabad
Bench, Hyderabad in C.A. No. 123/2017 in CP(IB) No. 01/HDB/2017]

IN THE MATTER OF:

Pr. Director General of Income Tax (Admn. & TPS) ...Appellant

Vs.

M/s. Synergies Dooray Automotive Ltd. & Ors. ...Respondents

Present: For Appellant: - Mr. Ruchir Bhatia and Mr. D.R. Jain, Senior
Standing Counsel with Mr. Shahrukh Ejaz, Mr. Sanampreet
Singham, Mr. Sunil Kumar Pandey, Advocates.

For Respondents: - Mr. Jayant Mehta, Mr. Rishi Sood, Mr.
Manu Krishnan, Mr. Sajal Jain, Mr. Divyanshu Aggarwal,
Advocates for R2.

Ms. Shrishti Khare and Ms. Jasveen Kaur, Advocates for SBI
& ICICI.

Mr. Rahul Ray, Advocate for R-8.

Company Appeal (AT) (Insolvency) No. 309 of 2018

(Arising out of Order dated 19th April, 2018 passed by the
Adjudicating Authority (National Company Law Tribunal), Mumbai
Bench, Mumbai in MA 35 of 2018 in CP No.
1132/I&BC/MB/MAH/2017]

IN THE MATTER OF:

Sales Tax Department, State of Maharashtra
Through Deputy Commissioner of State Tax,

(MUM-VAT-E-819), Nodal-3, Mumbai
Vs.

...Appel

M/s. Raj Oil Mills Limited & Ors.

...Respond

Present: For Appellant: - Ms. Pinky Anand, ASG and Mr. Atmaram
Madkarni, ASG with Ms. Rama Ahluwalia, Mr. Nishant, Mr.
Prashant Kenjale, Ms. Sridha Mehra, Advocates.

For Respondents: - Mr. Sanjay Bhatt and Ms. Honey Satpal,
Advocates for R1.

Dr. U.K. Choudhary, Senior Advocate with Mr. Rajesh Bohra,
Mr. Himanshu Vij, Mr. Uzair Kazi, Ms. Sangeeta Bohra, Mr.
Aditya Narayan, Mr. Sumit Melhotra, Advocates for
Successful Resolution Applicant.

Mr. Ramji Srinivasan, Senior Advocate with Mr. Vikram
Trivedi, Ms. Suchitra Valjee, Mr. Bharat Sangal and Ms.
Babita Kushwaha, Advocates for R5.

Mr. Mukul Talwar, Senior Advocate with Mr. Vinay
Deshpande, Mr. J.K. Chumbak and Ms. P. Meenakshi,
Advocates.

Company Appeal (AT) (Insolvency) No. 559 of 2018

(Arising out of Order dated 13th July, 2018 passed by the Adjudicating
Authority (National Company Law Tribunal), Mumbai Bench, Mumbai,
in MA 394/2018 in CP No. 1070/I&BC/NCLAT/MB/MAH/2017]

IN THE MATTER OF:

Sales Tax Department
State of Maharashtra

...Appel

Vs.

Phoenix Erectors Pvt. Ltd. & Ors.

...Respond

Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018

Present: For Appellant: - Mr. Prashant S. Kenjale and Mr. Nishant, Advocates.

For Respondents: - Mr. Sameer Abhyankar, Mr. Sangam Singh R. Bhonsle, Ms. Samridhi S. Jain, Mr. Siddharth A. Mehta and Mr. Akshay Joshi, Advocates for R-2 to 5.

Company Appeal (AT) (Insolvency) No. 671 of 2018

(Arising out of Order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 35 of 2018 in C.P. No. 1132/I&BC/MB/MAH/2017]

IN THE MATTER OF:

Pr. Commissioner of Income Tax (Central)-3, Mumbai

...Appel

Vs.

Raj Oils Mills Ltd. & Ors.

...Respond

Present: For Appellant: - Mr. Sanjay Kumar and Mr. Asheesh Jain, Advocates.

For Respondents: - Mr. Rajesh Bohra, Mr. Uzair Z Kazi, Mr. Aditya Narayan, Mrs. Sangeeta & Bohia, Advocates for R-1.

Company Appeal (AT) (Insolvency) No. 759 of 2018

(Arising out of Order dated 22nd October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 454/2018 in CP (IB) 1161(MB)/ 2017]

IN THE MATTER OF:

Sales Tax Department,
State of Maharashtra

...Appel

Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018

Vs.

Parte Casters Pvt. Ltd. & Ors.

...Respond

Present: For Appellant: - Mr. Prashant S. Kenjale, Advocate.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These appeals though heard separately but the question being common are being disposed of by this common judgment. In Company Appeal (AT) (Insolvency) No. 205 of 2017

2. This appeal has been preferred by 'Pr. Director General of Income Tax (Admn. & TPS)' against the order dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) approving the 'Resolution Plan' of 'M/s. Synergies Dooray Automotive Ltd.'.

3. The grievance of the Appellant is that the Adjudicating Authority has granted huge Income Tax benefits to the 2nd Respondent- 'Synergies Castings Ltd.' without impleading the Appellant department as a Respondent to the said proceedings.

Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 In Company Appeal (AT) (Insolvency) No. 671 of 2018

4. This appeal has been preferred by 'Pr. Commissioner of Income Tax (Central)-3, Mumbai' against the order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the Adjudicating Authority approved the 'Resolution Plan' in the 'Corporate Insolvency Resolution Process' initiated against 'Raj Oil Mills Limited'.

5. The grievance of the Appellant is that the Income Tax liability/ demand in respect of the 'Corporate Debtor' amounting to Rs. 338 Crores was settled for 1% of the 'crystallized demand' to a maximum of Rs.2.58 crores against the mandate of the Income Tax Act, 1961. In Company Appeal (AT) (Insolvency) No. 309 of 2018

6. The 'Sales Tax Department, State of Maharashtra' has challenged the order dated 19th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, in the 'Corporate Insolvency Resolution Process' initiated against 'Raj Oil Mills Limited' approving the 'Resolution Plan' under Section 31 of the 'I&B Code'.

Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018

7. The main plea taken by the Appellant is that the 'Resolution Professional' had not intimated during the 'Corporate Insolvency Resolution Process' to attend the meeting of the 'Committee of Creditors' and plan has been approved prejudicial to the rights of the Appellant.

8. Further, according to Appellant, the 'Sales Tax' and 'Value Added Tax' do not come within the meaning of 'Operational Debt' and thereby, 'Sales Tax Department, State of Maharashtra' cannot be treated to be an 'Operational Creditor'.

In Company Appeal (AT) (Insolvency) No. 559 of 2018

9. This appeal has also been preferred by 'Sales Tax Department, State of Maharashtra' against the order dated 13th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, in the 'Corporate Insolvency Resolution Process' initiated against 'Yashraaj Ethanoll Processing Pvt. Ltd.' whereby the modified 'Resolution Plan' has been approved under Section 31 of the 'I&B Code'. While similar plea has been taken that the 'State of Maharashtra' is not an 'Operational Creditor' and the 'Value Added Tax' do not come within the definition of 'Operational Debt', it was submitted that the reduction of 'Value Added Tax' to 1% is against the existing law. Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018

10. Reliance has been placed on Section 37 of the 'Maharashtra Value Added Tax, 2002' to show that the 'liability under the Act to be the first charge', which reads as follows:

"37. Liability under this Act to be the first charge—(1) Notwithstanding anything contained in any contract to the contrary but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, person.

(2) The first charge as mentioned in sub-section (1) shall be deemed to have been created on the expiry of the period specified in sub-section (4) of Section 32, for the payment of tax, penalty, interest, sum forfeited, fine or any other amount."

11. Reliance has also been placed on the decision of the Hon'ble Supreme Court in "Central Bank of India vs. State of Kerala & Ors." (2009) 4 SCC 94", wherein the Hon'ble Supreme Court held:

Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 "179. In this case the Bank had taken possession of the mortgaged assets on 15-2-2005 and sold the same. On 11-7-2005, the officers of the Commercial Tax Department informed the Bank about outstanding dues of sales tax amounting to Rs. 3,62,82,768. The Assistant Commissioner issued notice under Section 39 of the Bombay Act for recovery of Rs.48,48,614. The High Court negative the Bank's claim of priority and held that Section 35 of the Securitisation Act does not have overriding effect over Section 33-C (sic Section 38-

C) of the Bombay Act.

180. The view taken by the High Court is unexceptional and calls for no interference.

185. In our opinion, the Bank cannot claim priority over the dues of sales tax because statutory first charge had been created in favour of the State by Section 26-B which was inserted in the Kerala Act with effect from 1-4-1999 and the courts below did not commit any error from 1- 4-1999 and the courts below did not commit any Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 error by refusing to decree the suit for injunction filed by the Bank."

In Company Appeal (AT) (Insolvency) No. 759 of 2018

12. This appeal has also been preferred by 'Sales Tax Department, State of Maharashtra' against the order dated 22nd October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby the 'Resolution Plan' submitted in the 'Corporate Insolvency Resolution Process' initiated against 'Parte Casters Pvt. Ltd.'- ('Corporate Debtor') has been approved with 100% voting shares.

13. Apart from the plea taken by the Appellant in the aforesaid two appeals that 'State of Maharashtra' is not an 'Operational Creditor' and 'Value Added Tax' is not an 'Operational Debt', it was also submitted that the 'Resolution Plan' reduced the Appellant's claim to 20%. Legal Issue:

14. The question arises for consideration in these appeals are:

(i) Whether the 'Income Tax', 'Value Added Tax' or other statutory dues, such as 'Municipal Tax', 'Excise Duty', etc. come within the meaning of 'Operational Debt' or not? and;

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(ii) Whether the Central Government, the State Government or the legal authority having statutory claim, come within the meaning of 'Operational Creditors'?

15. Learned counsel appearing on behalf of the 'Pr. Commissioner of Income Tax (Central)-3, Mumbai' in Company Appeal (AT) (Insolvency) No. 671 of 2018 submits that a bare perusal of the

definition of 'Operational Debt' would reveal that Income Tax cannot be in the nature of 'Operational Debt' as 'Operational Debt' refers to the claim in respect of 'goods' or 'services' including employment or a debt in respect of re- payment of dues of the Central Government, State Government or the Local Authorities.

16. According to him, 'Income Tax' is the statutory liability of every person under Section 4 of the Income Tax Act, who are bound to pay Income Tax on its 'Total Income' (as defined under Section 5 of the Act). This is required to be discharged by every person including a 'Resolution Applicant'. Placing reliance on Chapter XVII (Collection and recovery tax), particularly Sections 190 to Sections 234F of the Income Tax Act, 1961 it was submitted that the said provisions if contravened will become redundant. Further, according to learned counsel for the Appellant, the 'Resolution Plan' approved by the Adjudicating Authority is in contravention of provisions of Section 220 read with Section 156 of the Income Tax Act, which read as under:

Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 "156. When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable"

xxx xxx xxx "220(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice :

Provided that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand. (1A) Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of the proceedings, as the case may be, and any such notice of demand shall have the effect as specified in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (11 of 1964). (2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid:

Provided that, where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 2648 [or an

order of the Settlement Commission under sub-section (4) of section 245D, the amount on which Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded :

xxx xxx xxx (2A) Notwithstanding anything contained in sub-

section (2), the Principal Chief Commissioner or] Chief Commissioner or Principal Commissioner or] Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if he is satisfied that--

(i) payment of such amount has caused or would cause genuine hardship to the assessee

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(iii) the assessee has co-operated in any inquiry relating to the assessment or any Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 proceeding for the recovery of any amount due from him."

17. A similar plea has been taken by the 'Sales Tax Department, State of Maharashtra' by relying on Section 37(1) of the 'Maharashtra Value Added Tax, 2002', as noticed above.

18. According to counsel appearing on behalf of one of the 'Successful Resolution Applicant', the statutory dues including the 'Income Tax' and the 'Sales Tax' come within the meaning of Section 5(20) read with Section 5(21) of the 'I&B Code'.

Reliance was placed on the provisions aforesaid to suggest that the 'Operational Debt' also included debts arising under any law payable to the Central Government and the State Government.

19. Mr. Rajiv Ranjan, Senior Advocate along with Mr. Sugam Seth were asked to assist this Appellate Tribunal on the question of law.

20. According to Mr. Rajiv Ranjan, Senior Advocate and Mr. Sugam Seth, learned Amicus Curiae, the 'Income Tax' or 'Value Added Tax' are not required for operation of the 'Corporate Debtor' and, therefore, they do not come within the meaning of 'Operational Debt'. Referring to the decision of the Hon'ble Supreme Court in "Life Insurance Corporation of India vs D. J. Bahadur & Ors.□(1981) 1 SCC 315", it was contended that the word 'or' may be interpreted as 'and' in certain extraordinary circumstances such as, in a situation where its use as a disjunctive could Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 obviously not have been intended. Reliance has been placed on the decision of the Hon'ble Supreme Court in "Life Insurance Corporation of India vs D. J. Bahadur & Ors.□(1981) 1 SCC 315".

21. Therefore, according to them, the word 'or' before the sentence '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' should be read as 'and' and it should be related to either supply of goods or for rendering services to the 'Corporate Debtor'. It was submitted that as tax is not related to 'supply of goods' or services rendered to the 'Corporate Debtor', they cannot be treated to be the 'Operational Debt'.

22. For determination of the issue, it is relevant to notice the definition of 'Operational Creditor' and the 'Operational Debt' as defined in Section 5(20) and Section 5(21), as quoted below:

"(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 Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 time being in force and payable to the Central Government, any State Government or any local authority;"

23. The word 'or' has been used at three places in Section 5 (21) namely-- a claim in respect of 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.

24. Whether 'or' used in three places in Section 5(21) is disjunctive or should be given the meaning 'and' is one of the issue?

25. In "Life Insurance Corporation of India" (Supra), the Hon'ble Supreme Court observed that in a case of ambiguity, the Court would choose that interpretation which would conform to the constitutionality of the provision. It further held that the change of word does not change its meaning and held:

"148. In order to steer clear of the above interpretation of Section 11(2) learned counsel for the employees put forward the argument that the word "or" occurring in the section should not be read as a disjunctive and should be given the meaning "and" so that the two clauses forming the conditions about which the Central Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 Government has to be satisfied before it can act under the section are taken to be one single whole; but we do not see any reason why the plain meaning of the word should be distorted to suit the convenience or the cause of the employees. It is no doubt true that the word "or"

may be interpreted as "and" in certain
extraordinary circumstances such as in a

situation where its use as a disjunctive could obviously not have been intended (see *Mazagaon Dock Ltd. v. Commissioner of Income Tax and Excess Profits Tax* [AIR 1958 SC 861 : 1959 SCR 848]). Where no compelling reason for the adoption of such a course is, however, available, the word "or" must be given its ordinary meaning, that is, as a disjunctive. This rule was thus applied to the interpretation of clause (c) of Section 3(1) of the U.P. (Temporary) Control of Rent and Eviction Act, 1974 in *Babu Manmohan Das Shah v. Bishun Das* [AIR 1967 SC 643 : (1967) 1 SCR 836] by Shelat, J.:

"The clause is couched in single and unambiguous language and in its plain meaning provides that it would be a good Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 ground enabling a landlord to sue for eviction without the permission of the District Magistrate if the tenant has made or has permitted to be made without the landlord's consent in writing such construction which materially alters the accommodation or is likely substantially to diminish its value. The language of the clause makes it clear that the legislature wanted to lay down two alternatives which would furnish a ground to the landlord to sue without the District Magistrate's permission, that is, where the tenant has made such construction which would materially alter the accommodation or which would be likely to substantially diminish its value. The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 being carried out. There is no reason why the word 'or' should be construed otherwise than in its ordinary meaning."

26. The word 'or' is normally disjunctive and 'and' is normally conjunctive, but at times they are read as vice versa, was noticed by the Hon'ble Supreme Court in "*Municipal Corpn. Of Delhi v. Tek Chand Bhatia*" (1980) 1 SCC 158", as follows:

"11.....(ii) In Stroud's Judicial Dictionary, 3rd Edn., Vol. 1, it is stated that p. 135:

"And' has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of 'or'. Sometimes, however, even in such a connection, it is, by force of a context, read as 'or'."

"You will find it said in some cases that 'or' means 'and' but 'or' never does means 'and'."

Similarly, in *Maxwell on Interpretation of Statutes*, 11th Edn. Pp. 229-230, it has been accepted that "to carry out the intention of the Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 legislature, it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other." The word "or" is normally disjunctive and "and" is normally conjunctive, but at times

they are read as vice versa. As Scrutton, L.J. said in *Green v. Premier Glynrhonwy State Co.* [LR (1928) 1 KB 561, 568]:

"You do sometimes read "or" as "and"

in a statute..... But you do not do it unless you are obliged, because "or" does not generally mean "and" and "and" does not generally mean "or". As Lord Halsbury L.C. observed in *Mersey Docks & Harbour Board v.*

Henderson [LR (1888) 13 AC 603] the reading of "or" as "and" is not to be resorted to "unless some other part of the same statute or the clear intention of its requires that to be done". The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation."

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27. In "*Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.*" Writ Petition (Civil) No. 99 of 2018", the Hon'ble Supreme Court while dealing with the different provisions of the 'I&B Code', including Section 5(20), observed as follows:

"23. A perusal of the definition of "financial creditor" and "financial debt" makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an 'operational debt' would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority."

28. From the plain reading of sub-section (21) of Section 5, we find that there is no ambiguity in the said provision and the legislature has not Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 used the word 'and' but chose the word 'or' between 'goods or services' including employment and before '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, and State Government or any local authority'.

29. 'Operational Debt' in normal course means a debt arising during the operation of the Company ('Corporate Debtor'). The 'goods' and 'services' including employment are required to keep the Company ('Corporate Debtor') operational as a going concern. If the Company ('Corporate Debtor') is operational and remains a going concern, only in such case, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the 'Income Tax', 'Value Added Tax' and other statutory dues arising out of the existing law, arises when the Company is operational, we hold

such statutory dues has direct nexus with operation of the Company. For the said reason also, we hold that all statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt'.

30. For the said very reason, we also hold that 'Income Tax Department of the Central Government' and the 'Sales Tax Department(s) of the State Government' and 'local authority', who are entitled for dues arising out of the existing law are 'Operational Creditor' within the meaning of Section 5(20) of the 'I&B Code'.

31. In Company Appeal (AT) (Insolvency) No. 205 of 2017, when the matter was taken up on 26th February, 2019, learned counsel appearing Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018 on behalf of the 'Successful Resolution Applicant'- (2nd Respondent) submitted that in the 'Resolution Plan it has been agreed to pay full payment of outstanding dues of Rs.389.53 lakhs in staggered manner over a period of three years and referred to clause 4.4.3, which reads as under:-

"(b) Statutory Dues 4.4.3 As per the latest provisional financial statement of SDAL for the FY ended on 31st March 2017 made available to us, the amount outstanding towards Statutory Dues was Rs.

389.53 Lac (constituting of Rs. 351.69 Lac as deferred sales tax and Rs.37.84 Lac as service tax dues). It is proposed to make full payment of Rs.389.53 Lac (as reduced by any payments that would have been already made by SDAL till the date of approval) pertaining to Statutory dues, however the payment shall be made in a staggered manner over a period of three years on an interest free basis, and the payment shall commence after completion of due payment of restructured dues to all the secured financial creditors of SDAL."

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32. In view of our finding as aforesaid and stand taken by the 'Resolution Applicant', no interference is called for against the impugned order dated 2nd August, 2017 challenged in Company Appeal (AT) (Insolvency) No. 205 of 2017.

33. In the other appeal, the statutory dues have been treated as 'Operational Debt' and equated them with similarly situated 'Operational Creditors', we find no reason to interfere with the impugned order(s) challenged in Company Appeal (AT) (Insolvency) Nos. 309, 559, 671 & 759 of 2018. All the appeals stand disposed of with aforesaid observations. No cost.

[Justice S.J. Mukhopadhyaya] Chairperson [Justice Bansilal Bhat] Member [Judicial] NEW DELHI
20th March, 2019 AR Company Appeal (AT) (Insol.) Nos. 205 of 2017 & 309, 559, 671 & 759 of 2018