

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

ITA No.1210/Del/2016  
Assessment Year: 2012-13

ACIT, Circle-19(1), New Delhi	<b>Vs.</b>	M/s. Prius Commercial Project Pvt. Ltd. (Earlier known as 'GYS Real Estate Pvt. Ltd.'), D-3, District Centre, Saket, New Delhi
<b>PAN :AACCG7906N</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Ms. Paramita M. Biswas, CIT(DR)
Respondent by	Sh. Paras S. Savla, Adv. Sh. Pratik B. Poddar, Adv.

Date of hearing	07.10.2021
Date of pronouncement	12.11.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the Revenue is directed against the order dated 17/12/2015 passed by the learned Commissioner of Income Tax (Appeals)-4, New Delhi [in short 'learned CIT(A)'] for the assessment year 2012-13. In the original grounds of appeal filed, the name of the assessee was appearing as 'GYS Real Estate Pvt. Ltd.', however, the Revenue has filed modified form no. 36 incorporating the respondent's new name, i.e., M/s. Prius

Commercial Project Pvt. Ltd. The grounds of appeal raised by the Revenue read as under:

1. *Whether on the facts and circumstances of the case in law Ld. CIT(A) was correct in deleting the addition u/s 68 on account of share capital and share premium ignoring the finding of AO in respect of creditworthiness of the share holders.*
2. *Whether Ld. CIT(AO) was correct in admitting the fresh evidence in the form of examination of the director of M/s Prius Real Estate Pvt. Ltd. without remanding the issue to AO and violating the Rule 46A of the IT Act, 1962.*
3. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.*

**2.** At the outset, the learned counsel appearing on behalf of the assessee submitted that post the appeal filed by the Revenue, Corporate Insolvency Resolution Process (in short 'CIRP') admitted against the assessee and the Hon'ble National Company Law Tribunal (in short 'NCLT') passed the order dated 9<sup>th</sup> August, 2019 pursuant to an application filed by one of the financial creditors. He submitted that in view of the resolution plan approved by the NCLT, no proceeding against corporate creditors could be pursued, nor assets of the corporate debtors could be transferred/alienated or disposed of and lastly, the recovery of any property by an owner or lesser could be pursued. Further, he submitted that in the case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 1554 & 1550-1553 of 2021), the Hon'ble Supreme Court has held that on the date of approval of the resolution plan, if any claim, which are not a part of the resolution plan, shall stand extinguished, and therefore, no further claim could be raised against the assessee.

**3.** Learned DR could not controvert the factual position stated by the learned counsel for the assessee.

**4.** We have heard the rival submissions of the parties on the issue in dispute and perused the relevant material on record.

**4.1** Before us, the learned counsel authorized by the resolution professional has filed copy of the order of NCLT in the case of the assessee. As per para 20 of the order of the NCLT, approving the resolution plan, the relief and concession have been granted as under:

*“From the plan approval date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan Approval Date, or arising on account of implementation of the Approved Resolution Plan shall stand withdrawn, satisfied and discharged. From the date of approval of the ‘Resolution Plan’, the Resolution Applicant shall be legally authorized to seek appropriate orders from the respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abatement of the proceeding as the case may be.”*

**4.2** In the case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (supra), the Hon’ble Supreme Court has held that any creditor including Central/State Government or local authority is bound by the Resolution Plan as approved by the adjudicating authority under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 and that the Central and State Government or local authority to which the operational debt is owed, shall be the operational creditor vis-a-vis the company. Further, it was held that on the date of approval of the resolution plan, if any claims, which is not part of the Resolution Plan, shall stand extinguished and no person shall

be entitled to initiate or continue any proceedings in respect of a claim, which is not part of the resolution plan.

**4.3** In these circumstances, we are of the considered opinion, that the debt involved in these appeal is subject to Corporation Insolvency Resolution Process already stood initiated against the assessee, who happens to be the corporate debtor, and therefore, these proceedings cannot be proceeded with the rights and liabilities of the parties are subject to the outcome of the CIRP. In view of the facts and circumstances, we do not find any reason to continue this adjudication process, and close the proceedings subject to the result of CIRP. The Revenue is at liberty to recall this appeal by way of filing Miscellaneous Application in case findings of the CIRP are reversed by any higher judicial forum.

**5.** In the result, the appeal of the Revenue is dismissed.

***Order pronounced in the open court on 12<sup>th</sup> November, 2021***

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER**

Dated: 12<sup>th</sup> November, 2021.

RK/-(DTC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi