

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

I.T.A. Nos. 562 & 563/HYD/2018
Assessment Years: 2008-09 & 2013-14

Asst. Commissioner of Income Tax,
Circle-1,
Kurnool

M/s.Panyam Cements & Mineral
Vs Industries Ltd.,
Nandyal
[PAN: AABCP2298M]

(Appellant)

(Respondent)

C.O. Nos. 30 & 31/HYD/2018
(in ITA Nos.562 & 563/Hyd/2018)
Assessment Years: 2008-09 & 2013-14

M/s.Panyam Cements & Mineral
Industries Ltd.,
Nandyal
[PAN: AABCP2298M]

Asst. Commissioner of Income Tax,
Vs Circle-1,
Kurnool

(Cross-Objector)

(Respondent)

Assessee by : Shri A.V.Raghuram, Advocate
Revenue by : Shri Sunku Srinivas, CIT-DR

Date of hearing: 19/04/2022
Pronouncement on 25/04/2022

ORDER

PER BENCH:

Aggrieved by the orders dated 09/01/2018 for the AY.2008-09 and 25/01/2018 for the AY.2013-14 passed by the learned Commissioner of Income Tax (Appeals), Kurnool, ("Ld. CIT(A)") in the case of M/s.Panyam Cements & Mineral Industries Ltd., ("the assessee"), Revenue preferred ITA Nos.562 & 563/Hyd/2018 respectively; whereas the assessee preferred C.O.Nos.30 & 31/Hyd/2018, supporting the orders of the CIT(A).

2. At the outset, when the matter is called today, counsel on either side submitted that in the case of assessee, the Corporate Insolvency Resolution Process took place and the Hon'ble National Company Law Tribunal, Amaravati Bench (NCLT) by order dt.25/06/2021 accepted the resolution plan dt.19/05/2021 submitted jointly by one M/s.RV Consulting Services Pvt Limited and Sagar Power Limited, who happened to be the resolution applicants, and observed that as against the claim of the Government to the tune of Rs.189.91 Crores, a sum of Rs.159.37 Crores was admitted, but only a sum of Rs.0.22 Crores was provided and upon this acceptance of the resolution plan dt.19/05/2021 all crystallised as well as the un-claimed liabilities of the corporate debtor (the assessee) as on such date stood extinguished and no creditors of the erstwhile corporate debtor can claim anything other than the liabilities referred to in the plan. A copy of the order dt.25/06/2021 passed by the NCLT in MA No.04/2021 in CP No.(IB)187/7/AMR/2019 is filed and forms part of record.

3. Both the counsel submitted that in view of the decision of the Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons Vs. Edelweiss Asset Reconstruction (2021) 126 taxmann.com 132 (SC), 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, that 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; that the 2019 amendment to Section 31 of the Insolvency and Bankruptcy Code is clarificatory and declaratory in nature and, therefore, will be effective from the date on which I&B Code has come into effect; and that 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.

4. We have gone through the record in the light of the submissions made on either side. It could be seen from the Form-B filed by the Revenue before the Insolvency Resolution Professional on 03/07/2020 (a copy of which forms part of record), Revenue preferred a claim to the tune of Rs.5,92,88,707/- before the Insolvency Resolution Professional basing on the demand notice/competition sheet and outstanding demand taken as on 03/07/2020, such a claim was considered by the committee of creditors and ultimately resulted in allocation of a sum of Rs.0.22 Crores to the

Government vide Sr.No.3(b)(i) of paragraph No.3(C) of the order dt.25/06/2021 passed by the NCLT. Apart from this, the NCLT categorically observed vide paragraph Nos. 18 and 20 that under the Insolvency and Bankruptcy Code, 2016 that all crystalized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of the Resolution Plan and no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 3(C) to para 5.

5. Further, the Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons Vs. Edelweiss Asset Reconstruction (2021) 126 taxmann.com 132 (SC) observed 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) 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 I&B Code has come into effect; and (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.

6. In view of the above factual and legal position, we are of the considered opinion that the Revenue is also bound by the Resolution plan as accepted by the NCLT and not entitled to anything more than what is

provided therein. It is submitted across the Bar by the Ld.AR that the Revenue did not prefer any appeal against the order passed by the NCLT. Amount provided under the resolution plan is only Rs.22 Lakhs as against the claim of the Revenue to the tune of Rs.5.93 Crores and therefore, the assessee cannot have any grievance in disposing-of these appeals in tune with the orders of the NCLT. Appeals are disposed-of accordingly.

7. In the result, the appeals of Revenue as well as the Cross Objections of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 25th day of April, 2022

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 25/04/2022

TNMM

Copy forwarded to:

1. The Assistant Commissioner of Income Tax, Circle-1, Kurnool.
2. M/s.Panyam Cements & Mineral Industries Ltd., C-1, Industrial Estate, Bommalsatram, Nandyal.
3. CIT(Appeals)-Kurnool.
4. Pr.CIT-Kurnool
5. D.R. ITAT, Hyderabad
6. Guard File

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ASSISTANT REGISTRAR
ITAT, HYDERABAD