

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI LALIET KUMAR, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1886/Hyd/2019	2008-09	IL & FS Engineering & Construction Company Limited, (Formerly M/s. MaytasInfra Limited) Hyderabad [PAN: AABCM3722F]	Dy. Commissioner of Income Tax, Central Circle-9, Hyderabad
1887/Hyd/2019	2009-10		
1888/Hyd/2019	2010-11		
1889/Hyd/2019	2011-12		Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad
1890/Hyd/2019	2012-13		
1891/Hyd/2019	2013-14		
1892/Hyd/2019	2014-15		
1893/Hyd/2019	2015-16		
1894/Hyd/2019	2009-10		

129/Hyd/2020	2008-09	Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad	IL & FS Engineering & Construction Company Limited, [PAN: AABCM3722F]
130/Hyd/2020	2009-10		
131/Hyd/2020	2009-10		
132/Hyd/2020	2010-11		
133/Hyd/2020	2011-12		
134/Hyd/2020	2013-14		
135/Hyd/2020	2014-15		

निर्धारित द्वारा/Assessee by: Shri K.C.Devdas, AR

राजस्व द्वारा/Revenue by: Shri Vijay Bhaskar Reddy, CIT-DR

सुनवाई की तारीख/Date of hearing: 19/09/2022

घोषणा की तारीख/Pronouncement on: 19/09/2022

आदेश / ORDER

PER LALIET KUMAR, J.M:

Aggrieved by the order(s) passed by the learned Commissioner of Income Tax(Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of M/s. IL&FS Engineering and Construction Co. Ltd.) ("the assessee") for the assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-

14, 2014-15 & 2015-16, both the assessee and Revenue preferred these appeals.

2. During the course of hearing, it was brought to our notice that Revenue preferred these appeals with a delay of 04 days. In this connection, Revenue filed affidavit(s) along with condonation application(s) explaining the reason(s) for delay in filing the appeals. After considering the contents of the condonation application filed along with the affidavit(s) and after hearing the Ld.AR, we condone the delay and proceed to hear the matter on merits.

3. At the outset it is represented by both the sides that the Corporate Insolvency Resolution Proceedings (CIRP) are pending against the assessee and as of now, Hon'ble National Company Law Appellate Tribunal (NCLAT) is seized with the jurisdiction.

4. We have considered the issue in the light of the provisions of Insolvency and Bankruptcy Code, 2016 ("the Code") and the decision of the Hon'ble Apex Court in the case of Ghanashyam Mishra And Sons vs Edelweiss Asset Reconstruction (2021) 126 taxmann.com 132 (SC). Under section 13 of the Code, the adjudicating authority after admission of the application under section 7 or 9 or 10 of the Code shall declare a moratorium which shall include the prohibition of the institution of suits or continuation of pending suits or proceedings against the corporate debtor in any court of law or tribunal. In Ghanashyam Mishra And Sons (supra), it was held that, **(i)** 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.

5. A reading of the provisions under section 13 and 14 of the Code along with the decision in Ghanashyam Mishra And Sons (supra), clearly shows that once the proceedings have commenced by institution of application under section 7 or 9 or 10 of the Code, the continuance of the pending proceedings is prohibited and when once they reach the logical conclusion with due approval of the resolution plan 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.

6. At any rate, for the time being, these appeals cannot be proceeded with during the continuance of the proceedings under the Code. Parties have to work out their remedies in the proceedings under the Code. However, depending upon the result of such proceedings before the adjudicating authority in respect of the corporate debtor, appropriate steps if any, may be taken by the appellant(s)/respondent(s). We, therefore, granting leave to the appellant(s)/respondent(s) in these appeals to seek the restoration of the appeals, if necessitated by the order in the Corporate Insolvency Resolution Proceedings, dismiss the appeals in limine. We derive support for the above proposition from the decision of the Mumbai Bench of the Tribunal in the case of Mahavir Roads & Infrastructure Pvt. Ltd., Vs. DCIT in ITA Nos. 646 to 651/Mum/2019 (AYs.2008-09 to 2013-14), dt.08/06/2022.

7. These appeals are dismissed in the light of the above observation. However, we make it clear that in case any issue is decided by the Hon'ble NCLT in favour of either of the parties, then any of the parties can move an application for modification/re-call of the order in accordance with law.

8. In the result, all these appeals are dismissed in limine.

Order pronounced in the open court on this the 19th day of September, 2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, Dated: 19/09/2022

TNMM

Copy forwarded to:

1. IL & FS Engineering & Construction Company Limited, (Formerly M/s. Maytas Infra Limited), 8-2-120/113/3, 2nd Floor, Block B, Sanali Info Park Road No. 2, Banjara Hills, Hyderabad.
2. DCIT, Central Circle-9, Hyderabad.
3. ACIT, Central Circle-3(2), Hyderabad.
4. CIT(A)-11, Hyderabad.
5. Pr.CIT(Central)-Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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ITAT, HYDERABAD