

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 812/Ahd/2019
Assessment Year 2015-16**

Real Strips Ltd., Survey No. 245, Village-Sari, Ahmedabad-Sanand Highway, Ahmedabad PAN: AABCR2893N (Appellant)	Vs	The DCIT, Circle-3(1)(2), Ahmedabad (Respondent)
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**Assessee by: Shri P.D. Shah, A.R.
Revenue by: Shri Atul Pandey, Sr. D.R.**

Date of hearing : 03-11-2022
Date of pronouncement : 10-11-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-9, Ahmedabad in Appeal no. CIT(A)-9/10288/DCIT Cir-3(1)(2)/17-18 vide order dated 22/04/2019 passed for the assessment year 2015-16.

2. At the time of hearing, the Ld. counsel for the assessee submitted that National Company Law Tribunal (NCLT), Ahmedabad has passed order 30(6) r.w.s. u/s 31 of the Insolvency and Bankruptcy Code, 2016 in IA 518 (AHM) 2021 in CP (IB) No. 307 of 2020, on 4th January 2022, in terms of which all liabilities of the assessee shall stand extinguished. A copy of the said order is also placed on record before us, the relevant position of which reads as under:-

*BEFORE THE ADJUDICATING AUTHORITY
IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
COURT-1*

*IA518(AHM)2021 In
CP (IB) 307 of 2020*

Memo of Parties

*Shri Ramchandra Dallaram Choudhary
Resolution Professional of
M/s Real Strips Limited
Office at: 9B, Vardan Tower
Lakhudi Circle, Naranpura
Ahmedabad-380014*

Applicant

Versus

*Committee of Creditors of M/s Real Strips Limited
Office at: Survey No.245-246
Village Sari, Ahmedabad-Bavla Highway
Taluka Sanand-Ahmedabad*

Respondent

*Order Reserved on: 15/12/2021
Order Pronounced on: 04/01/2022*

Accordingly, we being satisfied, approve the resolution plan and pass the following order:

I. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

II. **The order of moratorium dated 09.03.2021 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.**

III. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the Resolution Plan.

IV. The monitoring committee as proposed in Part R of the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.

V. The Resolution Professional, Shri Ramchandra Dallaram Choudhary, shall be released from the duties of the resolution professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/regulations made thereunder.

VI. The Resolution Professional shall forthwith send a copy of this Order to the participants and the resolution applicant(s).

VII. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

VIII. As regard to various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant: I

i. **After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished and that other claim including Government/ Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;**

ii. From the date of this order, all claims except provided in the plan of the Corporate Debtor stands extinguished.

iii. From the date of this order, all encumbrances on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished.

iv. For reliefs and concessions sought from the Government/Statutory Authorities including environmental clearance as well as stamp duty, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities may decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.

v. As regard to reliefs prayed under various provisions of Income Tax Act, 1961, the Corporate Debtor/ resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of Income Tax Act, 1961.

vi. The resolution applicant shall be entitled to review, revise or terminate any appointments /agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;

- vii. *The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the resolution applicant for proper running operations of the business of the Corporate Debtor;*
 - viii. *The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;*
 - ix. *The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;*
 - x. *All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. For concession of stamp duty as prayed in the resolution plan, the resolution applicant may approach the concerned Government Authority.*
 - xi. *In respect to the grant of license/ Government approval if license or approval is terminated, suspended, and revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.*
30. *Accordingly, IA 518 of 2021 is allowed with the above said observations and directions and stands disposed of.*
31. *Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.*

3. The counsel for the assessee during the course of hearing has confirmed that all dues to the creditors have been paid by the assessee. We note that in the case of **Palogix Infrastructure (P.) Ltd. v. ACIT [2022] 135 taxmann.com 73 (Kolkata - Trib.)**, the Kolkata Bench of this Tribunal held that Order passed by National Company Law Tribunal under section 31 of Insolvency and Bankruptcy Code, 2016 has overriding effect over anything inconsistent contained in Income-tax Act and it shall be binding on all respective entities including other stakeholders, which include Central Government, State Government and other local bodies. While allowing the assessee's appeal, the ITAT made the following observations:

7. The issue involved in the additional ground raised by the assessee relates to the effect of the order delivered by the National Company Law Tribunal, Kolkata Bench on 12-2-2018 approving the resolution plan on the proceedings in the case of the assessee for AY 2010-11, which is involved in the present appeal. The said order is passed under the Insolvency and Bankruptcy Code, 2016, section 238 of which reads as under :—

"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".

8. The provisions of the Insolvency and Bankruptcy Code, 2016 thus are given overriding effect and as held by the Hon'ble Supreme Court while disposing in the case of **Pr. CIT v. Monnet Ispat & Energy Ltd. [Petition for Special Leave to Appeal (C) No(s). 6483 of 2018, dated 10-8-2018]**, it is obvious that the Insolvency and Bankruptcy Code, 2016 going by section 238 will override anything inconsistent contained in any other enactment, including the Income-tax Act, 1961. A reference in this regard was made by the Hon'ble Supreme Court to their Lordships earlier decision in the case of **Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. 2000 taxmann.com 2145**, wherein it was clarified that Income-tax dues, being in the nature of crown debts, do not take precedence over secured creditors, who are private persons.

9. In the case of **Swiss Ribbons (P.) Ltd. v. Union of India [2019] 101 taxmann.com 389/152 SCL 365**, Hon'ble Supreme Court held that the core objective of the Code is to readapt the corporate debtor monetarily and for that purpose to protect the corporate debtor's assets from further dilution. But to fully accomplish the said purpose, the creditors must be barred from bringing up belated claims against a successful resolution applicant striving to resurrect the corporate debtor. Elaborating further, their Lordships observed that if the Government Departments are just going to bring up their claims after the

company is transferred over to a successful resolution applicant, then intent with which the Code was incorporated will never be achieved.

*10. In the case of **Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.** [2021] 126 taxmann.com 132/166 SCL 237, it was held by the Hon'ble Supreme Court that a bare reading of section 31(1) of the Code is enough to establish that once the resolution plan receives the assent of adjudicating authority, it shall be binding on all the respective entities, including corporate debtor and its employees, members, creditors, guarantors and other stakeholders. The said section 31 was subsequently amended in 2019 to clarify that the term "other stakeholders" include Central Government, State Government, and other local bodies, and this amendment has been held by the Courts as having retrospective effect being clarificatory and declaratory in nature.*

*11. Keeping in view the legal position emanating from the discussion made above in the light of judicial pronouncements of the Hon'ble Supreme Court, it is thus clear **that the order passed by the National Company Law Tribunal under section 31 of the Insolvency and Bankruptcy Code, 2016 has overriding effect over anything inconsistent contained in the Income-tax Act and it shall be binding on all the respective entities including other stakeholders, which include Central Government, State Government and other Local Bodies.** As per the said order delivered in the case of the assessee-company affirming the Resolution Plan, all dues under the provisions of the Income-tax Act including taxes, duty, penalties, interest, fines, cesses, unpaid tax deducted at source/tax collected at source, whether admitted or not, due or contingent, whether part of above claim of incometax authorities or not, whether part of tax due diligence finding or not, asserted or unasserted, crystallized or uncrystallized, known or known, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the resolution applicant over the company pursuant to this plan shall extinguished by virtue of the order of the adjudicating authority and the company should not be liable to*

pay any amount against such demand. Further, all assessments or other proceedings pending in case of the company, on the date of the order of the adjudicating authority relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, should be deleted and should be considered to be not payable by the company by virtue of the order of the adjudicating authority. Furthermore, all notices proposing to initiate any proceedings against the company in relation to the period prior to the date of adjudicating authority order and pending on that date, shall be considered deleted and should not be proceeded against. Post the order of the adjudicating authority, no reassessment/revision or any other proceedings under the provisions of the Income-tax Act should be initiated on the company in relation to period prior to acquisition of control by the resolution applicant over the Company pursuant to this plan shall stand extinguished by virtue of order of the National Company Law Tribunal and the assessee-company should not be liable to pay against such demand.

*12. Since the present appeal involving AY 2010-11 relates to the period prior to the acquisition of control by the Resolution Applicant over the company pursuant to this plan, all dues under the provisions of the Income-tax Act, 1961 including taxes, duty, penalties, interest fines, cesses, etc. shall stand extinguished by virtue of the order of the National Company Law Tribunal and all proceedings including the appellate proceedings pending on the date of the order of the National Company Law Tribunal including the present proceedings **relating to the prior period to the date of order shall stand extinguished and all consequential liabilities, if any, should be deleted and should be considered to be not payable by the Company.** In the light of the order of the National Company Law Tribunal (NCLT) dated 12-2-2018 passed in assessee's case, we deem it fit to restore the case for the assessment year under consideration before us to Assessing Officer for taking necessary action in accordance with law.*

13. In the result, the appeal of the assessee is treated as allowed for statistical purposes as indicated above.

4. Having regard to the facts of the case before us and keeping in view the decision of Co-ordinate Bench of this Tribunal at Kolkata in the case of **Palogix Infrastructure (P.) Ltd. v. ACIT [2022] 135 taxmann.com 73 (Kolkata - Trib.)**, we deem it fit to restore the case for the assessment year under consideration before us to the Assessing Officer for taking necessary action in accordance with law.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10-11-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT
Ahmedabad : Dated 10/11/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद