

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.21, 22 & 31/NAG/2019
निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10 & 2010-11

ACIT, Central Circle-2(1), Nagpur.	Vs.	M/s. Unijules Life Sciences Limited, CB-21, 22 Kalmeeshwar, MIDC Area, Nagpur- 441501. PAN : AAACU8032D
Appellant		Respondent

Revenue by : Shri Kailash G. Kanojiya
Assessee by : Shri Kapil Hirani

Date of hearing : 25.09.2023
Date of pronouncement : 05.10.2023

आदेश / ORDER

PER BENCH :

These are the appeals filed by Revenue against the separate orders of Id. Commissioner of Income Tax (Appeals)-3, Nagpur [‘the CIT(A)’] dated 31.12.2018, 11.01.2019 and 21.01.2019 for the assessment years 2008-09, 2009-10 and 2010-11 respectively.

2. Since the identical facts and common issues are involved in all the above captioned three appeals of the Revenue, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.21/NAG/2019 for the assessment year 2008-09 are stated herein.

ITA No.21/NAG/2019, A.Y. 2008-09 :

4. At the outset, it is evident from the record that the Corporate Insolvency Resolution Proceedings (CIRP) are pending against the respondent-assessee and as of now, Hon'ble National Company Law Appellate Tribunal (NCLAT) is seized with the jurisdiction.

5. 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.

6. 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. At any rate, for the time being, this appeal cannot be proceeded with during the continuance of 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/respondent. We, therefore, granting leave to the appellant/respondent in this appeal to seek the restoration of the appeal, if necessitated by the orders in the Corporate Insolvency Resolution Proceedings, dismiss the appeal *in limine*. We also derive support for the above proposition from the decision of the Jurisdictional High Court in the case of Murli Industries Limited vs. ACIT 441 ITR 8 (Bom.). The Hon'ble Bombay High Court after referring to the judgement of the Hon'ble Supreme Court in the case of Ghanashyam Mishra And Sons (supra) held that on the date of approval of the resolution plan by the Adjudicating Authority, all such claims which are not a part of the resolution plan, shall stand extinguished and no personnel shall be entitled to initiate or continue any proceedings in respect to

a claim, which is not a part of the resolution plan by holding as under :-

“16. Ultimately, the Hon’ble Supreme Court has answered the questions framed in the following manner:

“102.1. 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;

102.2. 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;

102.3. 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.”

17. A careful reading of the above findings, would show that even a claim in respect of dues arising under any law for the time being in force, including claims under the Income Tax Act, 1961 which is payable to the Central Government or the State Government, would come within the ambit of Operational Creditors. Further, the claim of operational creditors will also include a claim of statutory authority like Income Tax Department on account of money receivable pursuant to an imposition by a statute. The Hon’ble Supreme Court has also upheld the view taken by the Rajasthan High Court holding that the demand notices issued by the Central Goods and Service Tax Department, for a period prior to the date on which NCLT has granted its approval to the Resolution Plan, are not permissible in law. The concluding remarks of the Hon’ble Apex Court are that, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the 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 a part of the Resolution Plan. The expression ‘that no person will be entitled to initiate any proceedings’ would include the proceedings in the nature of notice issued under Section 148 of the Income Tax Act, 1961.

18. As we understand from the above rulings, the aim and object of IBC is to revive the Corporate Debtor by putting quietus to the claims against it. Providing certainty to the Resolution Applicant of “no” claims in future against the Corporate Debtor appears to be the essence of the Resolution Plan. Such inference could further be substantiated on the ground that the provisions of the IBC (Section 238 of IBC) have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force, including the Income Tax Act, 1961. The Hon’ble Apex Court has also held that section 31 of the amended Act will have retrospective effect.

19. Having said so, it is now crystallized that the claims which were not a part of the Resolution Plan including recoverable statutory dues, shall stand extinguished upon approval of the Resolution Plan.”

7. In the present case also, it is not a case of the Department that the claims which are part of subject matter of appeal are part of the resolution plan. Therefore, the ratio of the Jurisdictional High Court in the case of Murli Industries Limited (supra) is also squarely applicable to the facts of the present case. Thus, we do not find any merit in the appeal filed by the Revenue and hence stands dismissed.

8. In the result, the appeal of the Revenue in ITA No.21/NAG/2019 for A.Y. 2008-09 stands dismissed *in limine*.

ITA Nos.22 & 31/NAG/2019, A.Ys. 2009-10 & 2010-11 :

9. Since the facts and issues involved in remaining two appeals of the Revenue are identical, therefore, our decision in ITA No.21/NAG/2019 for A.Y. 2008-09 shall apply *mutatis mutandis* to the remaining two appeals of the Revenue in ITA Nos.22 &

31/NAG/2019 for A.Ys. 2009-10 & 2010-11 respectively.

Accordingly, the remaining two appeals of the Revenue in ITA Nos.22 & 31/NAG/2019 for A.Ys. 2009-10 & 2010-11 stands dismissed.

10. To sum up, all the above captioned three appeals of the Revenue stands dismissed.

Order pronounced on this 05th day of October, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 05th October, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Nagpur.
4. The CIT (Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /
DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.