

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.108/NAG/2022
निर्धारण वर्ष / Assessment Year : 2014-15

Assistant Commissioner of Income Tax,
Central Circle – 2(1), Nagpur

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Gupta Energy Pvt. Ltd.,
4th Floor, Gupta Tower,
Temple Road, Civil Lines,
Nagpur – 440001

PAN : AADCG0034E

.....प्रत्यर्थी / Respondent

Assessee by : Shri K.K. Gupta
Revenue by : Shri Kailash Kanojiya

सुनवाई की तारीख / Date of Hearing : 02-02-2024
घोषणा की तारीख / Date of Pronouncement : 12-02-2024

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 31-03-2022 passed by the Commissioner of Income Tax (Appeals)-3, Nagpur [‘CIT(A)’] for assessment year 2014-15.

2. The appellant-revenue raised three grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in deleting the addition made by the AO on account of disallowance u/s. 40(a)(ia) of the Act.

3. Brief facts relating to the appeal as emanating from the impugned order are that the respondent-assessee is a private limited company engaged in the business of generation of power from a reject-coal based thermal power plant. The assessee filed return of income declaring a loss of Rs.1,64,32,78,020/- on 30-11-2014. Under scrutiny, notice u/s. 143(2) of the Act was issued to the assessee. According to the AO, the assessee had received share application money in the Financial Year 2012-13 from its related party i.e. M/s. Gupta Global Resources Pvt. Ltd. but no shares could be allotted against it and the assessee paid interest in Financial Year 2012-13 on such share application money without deducting TDS and disallowed on its own interest on share application money in A.Y. 2013-14. Further, the AO observed for the year under consideration, the assessee deducted TDS and claimed as expenditure under proviso to section 40(a)(ia) of the Act. The AO further observed that share application money is different from loan or advance, since, the assessee has not paid any interest on share application money pending allotment in the earlier assessment years, the same will not be allowed in subsequent assessment year i.e. A.Y. 2014-15 and disallowed interest on share application money vide its order dated 21-12-2016 passed by the AO u/s. 143(3) of the Act. The CIT(A) by following the order of Pune Tribunal in the case of S.R. Thorat Milk Products Pvt. Ltd. in ITA Nos. 1533 to 1537/PN/2014 for A.Ys. 2004-05, 2005-06, 2007-08 to 2009-10 held the claim of interest expenditure on share application money is revenue expenditure and allowable under the Act vide para 4.3 of the impugned order. Having

aggrieved, the appellant-revenue is before us by raising above mentioned three grounds.

4. Shri Kailash Kanojiya, the Id. CIT-DR drew our attention to paper book and reiterated written submissions at pages 1 to 4 filed in support of grounds raised above. The written submissions of which is reproduced hereunder for ready reference :

OFFICE OF THE COMMISSIONER OF INCOME TAX (ITAT) 7 th Floor, 'A' Wing, CGO Complex, Seminary Hills, Nagpur-440006	
No. CIT(ITAT)/NGP/Bench/2023-24	Date : 01.12.2023

To,
The Registrar
Hon'ble ITAT Bench,
Nagpur

Sir,

Sub : ITAT's Appeal No. 108/NAG/2022 in the case of M/s. Gupta Energy Pvt. Ltd. (PAN: AADCG0034E) for the A Y 2014-15 - Paper Book - reg.

2. The above case was fixed for virtual hearing before the Hon'ble IT AT Bench Nagpur on 30.11.2023, wherein the Hon'ble member has directed to the CIT(DR), Nagpur to file a paper book where addition was made by the AO on the basis of disallowance of deduction as interest paid on .share application money and the same to submit before the Hon'ble ITAT Bench.

3. In this case, it is seen from the computation of income for the A Y 2014-15 that out of the total income, the assessee has claimed deduction of Rs.26,32,85,357/-. This disallowance was claimed since the disallowance was made u/s 40(a)(ia) in the AY 2013-14. Now since the assessee has paid TDS during the A Y 2014-15 hence, claimed the deduction for the entire disallowance of Rs.26,32,85,357/-. The disallowance made u/s 40(a)(ia) in AY 2013-14 includes an amount of Rs.5,19,45,259/- on account of interest on share application money as no tax was deducted from the same and for the reasons mentioned in para No.4 of assessment order for A Y 2013-14.

4. In the AY 2013-14 the claim or the assessee of interest on share application money was disallowed on merits after assigning reasons. Therefore, in the AY 2014-15 the assessee's claim of deduction on account of same cannot be allowed even when the assessee has paid the tax deducted during the year, as the same was disallowed on merits and not only under 40(a)(ia). Accordingly in the AY 2014-15, assessee's claim of deduction on this account on the basis of payment of TDS stands disallowed.

5. As per the P&L account it is seen that the assessee has debited an amount of Rs.5,19,45,259/- under the caption interest on share application money. During the course of assessment proceedings, the assessee was required to explain the nature of the same and to justify its allowability. The AR of the assessee has submitted that the allotment of shares was delayed due to some unavoidable reasons and therefore interest was paid on such share application money as per mutual agreement. It is also submitted that as the share application money was utilized for business purpose, it becomes business expenditure and therefore deduction of the same is allowable.

6. At the outset it is necessary to place on record that the assessee has debited an amount of Rs.5,19,45,259/- being interest paid on Share Application Money received from its Group

Company i.e. M/s Global Resources Pvt. Ltd. In this regards the interest has been paid on Share Application Money and not on any loan or advance received. The assessee has submitted that allotment of Shares was delayed and hence interest was paid as per mutual agreement. The plea of the assessee cannot be accepted as the assessee has not filed any evidence to show that there was a condition in share application to provide interest. It is also seen from the records that the assessee has received the share application money from same group company in preceding year also which is pending for allotment. However, in the preceding year no such interest has been paid to the applicant of share capital. This clearly shows that there was no such condition to pay interest on share application money received.

7. The Ld. CIT (A) has allowed the appeal of the assessee on relying the decisions of Hon'ble ITAT Pune Bench in the case of Rohit Exhaust Systems Pvt. Ltd. vs ACIT [ITA No. 686/PN/2011 and ITA No. 687/PN/2011], Western India Forging Ltd [ITA No. 419/PN/2002 dated 24.02.2007] and S.R. Thorat Milk Products Pvt vs. CIT [ITA No. 1533 to 1537/PN/2014] the Hon'ble Pune bench followed its decision in the case of Western India Forging Ltd and decided that the interest paid on share application money pending allotment is to be allowed as business expenditure based on the principle of commercial expediency. The decision of Hon'ble ITAT Pune bench is reproduced as under:

"In light of the decision of the coordinate bench of ITAT, we find considerable merits in the argument of the assessee. We also find substance in the various contentions raised on behalf of the assessee. We are of the view that the share application money per se cannot be characterized and equated with share capital. The obligation to return the money received. Allotment of shares are subject to certain regulations and restrictions as provided under Companies Act. Therefore, receipt by way of share application money is not receipt held towards share capital before its conversion. Therefore, payment of interest on share application money cannot be treated differently in income Tax Act. Once the contention of the assessee that money has been utilized for the purpose of business remains uncontroverted, there is no justification to hold the issue against the assessee. Accordingly, the claim of interest expenditure on share application money as revenue expenditure deserves to be allowed. The Assessing Officer is therefore directed to delete the addition on merits. In the result, the assessee succeeds on this issue."

8. Thus, the Ld. CIT(A) considering the facts and circumstances of the case relying the judicial decisions on the issue in question held that the AO was not justified in disallowing the interest of Rs.5,19,45,259/- on share application money.

9. The Ld. CIT(A) has not considered sub-section (6) of Section 42 of the Company's Act, 2013 which states as under.

"A Company making an offer or invitation under this section shall allot its allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized/or any purpose other than-

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

From the above provisions of the Company's Act, it is clear that assessee has to utilize the funds received towards Share application money only for the restricted purposes that too out of the Escrow Account. The said condition has not been fulfilled by the appellant and violated the provisions of the Company's Act as mentioned supra.

10 The Ld. CIT(DR) relies on the decision of the Hon'ble Supreme Court of India in the case of Brooke Bond India Ltd. vs. Commissioner of Income Tax vide Civil Appeal No.

5771 (NT) of 1983 dated 27/02/1997 wherein the Apex Court observed that where the object of enhancement of the capital was to have more working funds for the assessee to carry on its business and to earn more profit and that in such a case the expenditure that is incurred in connection with issuing of shares to increase the capital has to be treated as the capital expenditure. In this connection, the Id. Counsel of the assessee has invited attention of the Apex Court to the submissions that were urged by the learned counsel for the assessee before the AAC as well as before the Tribunal. It is no doubt true that before the AAC as well as before the Tribunal it was submitted on behalf of the assessee that increase in the capital was to meet the need for working funds for the assessee-company. But the statement of case sent by the Tribunal does not indicate that a finding was recorded to the effect that the expansion of the capital was undertaken by the assessee in order to meet the need for more working funds for the assessee. We, therefore, cannot proceed on the basis that the expansion of the capital was undertaken by the assessee for the purpose of meeting the need for working funds for the assessee to carry on its business. In any event, the above quoted observations of the Apex Court in Punjab State Industrial Development Corpn. Ltd.'s case (supra) clearly indicates that increase in the share capital results in expansion of the capital base of the company and that would accordingly help in the business of the company and may also help in the profit making. Hence, the expenses incurred in that connection would still retain the character of a capital expenditure since here is a directly nexus with the expansion of the capital base of the company.

11. In view of the foregoing and following the ratio decidendi as laid down by the Hon'ble Apex Court in the judgement mentioned above, expenditure incurred on issuing shares to increase the share capital is capital in nature and ought to be disallowed under section 37(I) of the I. T. Act, 1961.

Nagpur, dated 1st Dec., 2023

Yours faithfully,
Sd/-
(Kailash C. Kanojiya)
Commissioner of Income Tax (DR)
ITAT, Nagpur

5. On perusal of the above, we note that the contention of Id. DR is that no interest was paid on any loan or advance received and the interest payment on share application money is different. He argued the contention of assessee should not be accepted as the interest was paid as per mutual agreement for delay of allotment of shares in the absence of any evidence showing that there is a condition in share application for payment of interest. Further, he argued that the CIT(A) did not consider sub-section (6) of Section 42 of the Company's Act, 2013, wherein, it is clear that the assessee has to utilize funds received towards share application money only for the restricted purposes that too out of the Escrow Account. The assessee did not fulfill the said condition and completely violated the provisions of the Company's Act, 2013. Further, he placed reliance on the decision of Hon'ble Supreme Court in the case of Brooke Bond India Ltd. in Civil Appeal No. 5771 (NT) of 1983 dated 27-02-

1997 and argued that the object of enhancement of the capital was to have more working funds for the assessee to carry on its business and to earn more profit, if the expenditure that is incurred in connection with issuance of shares to increase the capital, has to be treated as the capital expenditure.

6. In reply, Shri K.K. Gupta, the ld. AR of the assessee drew our attention to paper book containing pages 1 to 5. He submits that National Company Law Tribunal, Mumbai Benches passed order u/s. 33 of the Insolvency & Bankruptcy Code, 2016 and no suit or other legal proceeding shall be instituted by or against the Corporate Debtor u/s. 33(6) of the Insolvency & Bankruptcy Code, 2016. The written submissions of which is reproduced hereunder for ready reference :

To,
The Honourable Bench
ITAT, Nagpur Bench

Subject: Written Submission

Respected Sir,
An appeal has been filed by department against the appeal order dt. 31/03/2022 passed by the CIT Appeal. Appeal pertains to the A.Y. 2014-15 and ITA No. of the Appeal is 108/NAG/2022.

It is for information of the bench that company went into Liquidation u/s 33 of IBC vide order dt. 26/03/2018. NCLT, Mumbai bench in its liquidation order specifically mention at point no. 9(d) of the order that – "Since the Liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the code."

As per Section 33(5) of the IBC Act - "Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority."

As per Section 238 of tile code - "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."

Hence, in view of above fact, It is plead that an appeal filed by the Department before ITAT be dismissed.

Thanking You

Yours faithfully
Sd/
Counsel for Assessee
(Krishnakumar Gupta)

7. On an examination of the above, we find the contention of the assessee is that the present appeal is not maintainable since, the NCLT passed Liquidation Order u/s. 33 of the IBC, 2016. We find the order dated 26-03-2018 on the file of National Company Law Tribunal, Mumbai Bench at pages 2 to 5 in assessee's own case is reproduced hereunder for ready reference :

ORDER

Order pronounced on 15.03.2018

When this applicant, i.e. Resolution Professional initially filed an MA 24/2018, seeking necessary orders after consideration of the Resolution Plan and voting results of the meeting of the members of COC and for approval of the Resolution Plan which was not approved by COC with 75% majority, in the alternative for initiation of liquidation process in respect to the Corporate Debtor, this Bench made an observation in the order dated 20.2.2018 stating that this applicant failed to discharged his duties as mentioned under the Code in placing the material before this Bench for passing a Liquidation order as no resolution was approved by COC with 75% majority.

In view of the observation made by this Bench in the order dated 20.2.2018, this Applicant now filed another MA 162/2018 seeking relief that the Corporate Debtor be liquidated In terms of this Code and also to appoint some other Insolvency Professional as Liquidator of the Corporate Debtor as per the provisions of Section 34 of the Code.

3. In addition to the application above mentioned. Another MA 154/2018 has been filed by the very Applicant for a direction to the COC to pay Insolvency resolution process cost incurred till date. i.e. 26.2.2018 and such other additional legal costs which are likely to be Incurred till the date of liquidation order to be passed by this Bench stating that Rs.121.74 lakhs is outstanding and payable to this Applicant towards CIRP costs by the COC but till date that has not been paid to the Resolution Professional. The Applicant has stated that this costs Includes the charges for security deployed for the maintenance of the plant location. As on date, the wages for the period from November, 2017 onwards are pending for disbursement due to non-remittance of funds from the respective creditors.

4. As to MA 162/2018, it appears now this Applicant filed all the requisite documents such as public announcement given by IRP on 12.4.2017 stating that moratorium has been declared on the Corporate Debtor basing on the order passed by this Bench inviting the creditors to place their claims on or before 24.4.2017, likewise, list of financial creditors, dues to workmen and list of operational creditors and other details basing on which a memorandum was prepared by this Applicant so as to place the same before COC. This Applicant has also filed valuation reports given by two Valuers one valuing the asset of company as Rs.13,29,94,575.63 and another valuing the asset at Rs.111,56,25,361.72 upon which an average was taken by this Applicant determining the liquidation value of the company as Rs.1,12,43,09,968.68. Thereafter, an expression of interest was taken out, in pursuance of it, since no resolution was approved by COC with 75%, the Applicant says that an order is to be passed under Section 33(1) of this Code.

5. For the COC failed to approve the resolution plan with 75% majority, the applicant herein filed this MA 162/2018 to liquidate the Corporate Debtor as mentioned under Section 33(1) of the Code.

6. On perusal of the material placed before this Bench, it appears that the IRP as well as RP appointed in this case gave public announcement under Section 33 of the Code thereafter, collated the claims of the creditors and the then reports from two valuers as stated under the Code basing on that information, this applicant placed information Memorandum before the COC thereafter, on announcement of expression of interest when a resolution applicant fled a Resolution plan, the same not being

approved by the COC, this applicant filed this Application before this Bench for passing Liquidation Order. On looking at the compliance of the provisions of the Code in carrying the functions of the Resolution Professional, for there being no resolution plan approved by COC, this Bench hereby passes this order for Liquidation as envisaged under Section 33(2) of the Insolvency & Bankruptcy Code, 2016.

7. As to resolution cost is concerned, for there being no funds with the company to pay to the Resolution professional, there being a Regulation 34 under Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, saying that costs shall be reimbursed by COC to the RP to the extent ratified under Regulation 33 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016. The Applicant having already stated that the cost of the Resolution Professional been ratified by the COC in its 9th meeting held on 3.1.2018, the COC is hereby directed to reimburse the costs to the RP proportionate to the claim shown against each of the members of the COC Within 30 days hereof.

8. As to replacement of Liquidator is concerned, the law says that the person worked as Resolution professional has to continue as Liquidator, but by seeking his conduct in the past, apart from his own seeking replacing him with another Resolution professional as Liquidator, we believe, to avoid further in-diligence in handling the functions of the Liquidator, that the replacement of some other Resolution Professional in place of the present Resolution Professional to act as Liquidator is imperative, therefore, we hereby appoint Mr. Vikas Prakash Gupta (Reg. No. IBBI/IPA-007/IP-P00501/2017-18/10889), as Liquidator in the place of the present Resolution Professional referring this issue to IBBI for examination of the conduct of the present Resolution Professional, viz. Mr. T. Sathisan without being influenced by any of the observations made by this Bench.

9. For this Bench having already held that this is the case fit for passing Liquidation Order, this Bench hereby directs as follows :

a. This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.

b. For the Liquidator has been appointed in the place of the Resolution Professional Mr. T. Sathisan, he shall hand over charge to the Liquidator, Mr. Vikas Prakash Gupta within one week from the date of delivery of this Order.

c. Mr Vikas Prakash Gupta is hereby directed to act as Liquidator for the purpose of liquidation with all powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

d. Since this liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.

e. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

f. The Liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and Bankruptcy Code, 2016 and also Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

10. Accordingly MA24/2018, MA154/2018 and MA162/2018 are hereby disposed of.

8. On perusal of the above order, we note that the assessee through its Resolution Professional filed an MA 24/2018 seeking necessary orders considering the Resolution Plan which was not approved by COC with 75% majority. The Learned NCLT, Mumbai Bench appointed Mr. Vikas Prakash Gupta as Liquidator vide para 9(c) for the purpose of liquidation with all powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall be ceased to have effect and hereby vested in the Liquidator. It is observed from para 9(d) of the said order that no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section (6) of Section 33 of the Code. It is brought to our notice the order of this Tribunal vide order dated 17-10-2023 in the case of Ballarpur Industries Ltd. in ITA No. 136/NAG/1999 for A.Y. 1993-94, wherein, following the decision of Hon'ble High Court of Bombay in the case of Murli Industries Limited reported in 441 ITR 8 (Bom.) dismissed the appeal of assessee by observing that it is not a case of Department that the claims are part of subject matter of appeal are part of resolution plan and held the ratio of Hon'ble High Court of Bombay in the case of Murli Industries Limited (supra) is squarely applicable. We note that the Hon'ble High Court of Bombay place reliance on the decision of Hon'ble Supreme Court in the case of Ghanashyam Mishra And Sons reported in (2021) 126 taxmann.com 132 (SC) held that on the date of approval of 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.

9. We note the question involved before Hon'ble High Court of Bombay in the case of Murli Industries Limited (supra) is at para 3 which reads as :

“Whether the Authorities of the Income Tax Department can issue notice under Section 148 of the Income Tax Act, 1961 to a Corporate Debtor, calling upon it to submit a return in the prescribed form for the assessment year falling prior to the date of approval of Resolution Plan under Insolvency and Bankruptcy Code, 2016 on the ground that Respondent No. 1 – Assessing Officer had a reason to believe that the income chargeable to tax of the Corporate Debtor has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961?”. Further, we note that the Hon’ble High Court found answer to the above question traceable in the case of *Ghanashyam Mishra And Sons (supra)* of Hon’ble Supreme Court. We note that the Hon’ble Supreme Court held :

“13. The Adjudicating Authority conducts an enquiry in terms of Section 30(2) of IBC on the point as to whether the Resolution Plan provides, inter alia, the repayment of the debts of Operational Creditors in the prescribed manner and that the plan does not contravene any provisions of the law for the time being in force. In that sense, once the Resolution Plan is approved by the Adjudicating Authority and once it attains finality, it could be presumed that the plan does not contravene any of the provisions of law for the time being in force including provisions of the Income Tax Act, 1961.

14. The Hon’ble Supreme Court, in context with raising subsequent claims has held that a Successful Resolution Applicant cannot suddenly be faced with undecided claims after the Resolution Plan is submitted by him, as it would lead to uncertainty about the amount payable by a Prospective Resolution Applicant who would successfully take over the business of the Corporate Debtor. It is accordingly held by the Hon’ble Supreme Court that once the plan is approved by Adjudicating Authority, it becomes binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders including statutory bodies involved in the Resolution Plan. It is further held that the legislative intent behind this is to freeze all the claims so that the Resolution Applicant starts on a clean slate and is not flung with any surprise claims.

15. On the point of claims by the Central Government, State Government or other local authorities, the important rulings find place in the following paragraphs:

“We have no hesitation to say, that the word “other stakeholders” would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief. We therefore hold, that the 2019 amendment is declaratory and clarificatory in nature and therefore retrospective in operation.

98. It is a cardinal principle of law, that a statute has to be read as a whole. Harmonious construction of sub section (10) of Section 3 of the I&B Code read with sub sections (20) and (21) of Section 5 thereof would reveal, that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority would come within the ambit of ‘operational debt’. The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of ‘operational creditor’ as defined under subsection (20) of Section 5 of the I&B Code.

Consequently, a person to whom a debt is owed would be covered by the definition of 'creditor' as defined under subsection (10) of Section 3 of the I&B Code. As such, even without the 2019 amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term 'creditor' and in any case, by the term 'other stakeholders' as provided in sub section (1) of Section 31 of the I&B Code.

99. The Division Bench of the Rajasthan High Court in D.B. Civil Writ Petition No.9480 of 2019 in the case of Ultra Tech Nathdwara Cement Ltd. vs. Union of India & Ors., by judgment and order dated 7.4.2020 has taken a view, 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. While doing so, the Rajasthan High Court has relied on the judgment of this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).

100. The Calcutta High Court in the case of Akshay Jhunjhunwala & Anr. vs. Union of India through the Ministry of Corporate Affairs & Ors. 35 has also taken a view, that the claim of operational creditor will also include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute. We are in agreement with the views taken by these Courts. " (Emphasis supplied).

Ultimately, the Hon'ble Supreme Court has answered the questions framed in the following manner.

(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.

(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."

10. In the present case, we find as seen from Liquidation Order dated 23-03-2018, that no Resolution Plan was approved by the COC, thereby the assessee sought intervention of Learned NCLT to pass Liquidation order vide para 9 (c) and (d), wherein, the Learned NCLT directed Mr. Vikas Prakash Gupta to act as Liquidator and also observed no suit or legal proceeding is barred in any forum in view of the said Liquidation Order. The Hon'ble Supreme Court held that 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 proceeding in respect of such dues for the period prior to the date of which the Adjudicating Authority grants its approval u/s. 31 could be continued. Admittedly, It is not the case of appellant-revenue that the subject matter in the present appeal is part of resolution plan, therefore, all dues in the form of statutory dues of Central Government shall stand extinguished. Thus, the grounds raised by the Revenue fails and are dismissed.

11. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 12th February, 2024.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th February, 2024.
रवि

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 Pr. CIT (Central), Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune