

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

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.602/Hyd/2023		
Assessment Year: 2018-19		
The Assistant Commissioner of Income Tax, Circle – 2(1), Hyderabad.	Vs.	KSK MAHANADI POWER COMPANY LIMITED, JUBILEE HILSS, 8-2-293/82/a/431A, Road No.22, Jubilee Hills, Telangana
(Appellant)		(Respondent)
Assessee by:	Shri S. Venugopal, C.A.	
Revenue by:	Ms. Sheetal Sarin, Sr. AR	
Date of hearing:	18.03.2024	
Date of pronouncement:	19.03.2024	

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the Revenue feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 04.10.2023 for the AY 2018-19 on the following grounds :

2. 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.

3. 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 adjudication 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.

4. 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, these appeals 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 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.

5. In the result, the appeal of Revenue is dismissed in limine.

Order pronounced in the Open Court on 19th March, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 19th March, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	KSK Mahanadi Power Company Limited, 8-2-293/82/A/431A Road No.22, Jubilee Hills Hyderabad-500 033
2	Assistant Commissioner of Income Tax, Circle-2(1) Room No.513, 5 th Floor Signature Towers Kondapur, Telangana. Hyderabad-500 084
3	Prl.CIT-2, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order