

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 899/KOL/2018
Assessment Year: 2009-10
&
ITA No. 1145/KOL/2018
Assessment Year: 2013-14**

McNally Sayaji Engineering Limited, Ecospace, Campus 2B, 11F/12 (Old Plot No. AA II/Blk 3), New Town, Rajarhat, North 24 Paragans, Kolkata - 7000156 (PAN: AACCS5491A)	Vs	Deputy Commissioner of Income Tax, Circle 1(1), Aayakar Bhavan, P-7, Chowringhee Square, Kolkata - 700069
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Abhishek Sureka, AR
Respondent by : Shri Rakesh Kumar Das, CIT, DR
Shri Vineet Kumar, Addl. CIT, Sr. DR

Date of Hearing : 08.07.2024
Date of Pronouncement : 03.10.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are against the two separate orders of the Ld. Commissioner of Income Tax, Kolkata-I, Kolkata (hereinafter referred to as “the Ld. CIT”) passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AYs 2009-10 and 2013-14, dated 28.02.2018 and 13.03.2018 respectively. Both the appeals were heard together and are being disposed of vide this common order for the sake of brevity and convenience.

2. The grounds of appeal raised by the assessee are reproduced as under:

I. ITA No. 899/Kol/2018 (Assessment Year: 2009-10)

Management Service Fee

"1. For that the Commissioner of Income Tax (Appeals) erroneously and/or perversely held that tax was deductible at source under Chapter XVII-B of the Income Tax Act, 1961 on the payment of management service fee of Rs. 3,52,76,000/- during the relevant assessment year 2009-10.

2) For that the Commissioner of Income Tax (Appeals) erred in disallowing the management service fee of Rs. 3,52,76,000/- under section 40(a)(ia) of the Income Tax Act, 1961.

3) For that without prejudice to the aforesaid the Commissioner of Income Tax (Appeals) failed to consider that since tax was deducted at source on the management services paid and the same was duly deposited within the due date, the deduction should have been allowed either in assessment year 2009-10 or in the subsequent assessment year 2010-11.

Royalty

4) For that the Commissioner of Income Tax (Appeals) erroneously and perversely held that tax was deductible at source under Chapter XVII-B of the Income Tax Act, 1961 on the provision for royalty of Rs. 1,02,87,073/- during the relevant assessment year 2009-10.

5) For that the Commissioner of Income Tax (Appeals) erred in disallowing the provision for royalty of Rs. 1,02,87,073/- under section 40(a) of the Income Tax Act, 1961.

6) For that without prejudice to the aforesaid the Commissioner of Income Tax (Appeals) failed to consider that since tax was deducted at source on the actual payment of royalty and was duly deposited within the due date, the deduction of the royalty paid should have been allowed in the subsequent assessment year 2010-11.

Interest under section 234C of the Income Tax Act, 1961

7) For that the Commissioner of Income Tax (Appeals) erred in upholding the levy of interest under section 234C of the Income Tax Act, 1961. That the Appellant craves leave to add, alter, supplements, amend, modify, substitute and/or rescind the grounds hereinabove before or at the time of hearing of this appeal."

II. ITA No. 1145/Kol/2018 (Assessment Year: 2013-14)

"1. For that, the disallowances and/or denial of claims and/ or reliefs made by the Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)] are grossly unjustified, erroneous, perverse and unsustainable and necessary direction be given for appropriate relief in accordance with law.

Disallowance of provision of freight charges: Rs. 46,82,901

2) *For that, the Ld. CIT(A) has erred in confirming the disallowance of provision for freight charges on the ground that the provision is not allowable as deduction under Section 37 of the Act.*

3) *For that, the Ld. CIT(A) has erred in not appreciating the fact that the provision represented an actual liability towards freight expenses and not contingent or an unascertained liability.*

Disallowance of loss order provision under miscellaneous expenses:Rs. 22,55,642

4) *For that, the Ld CIT(A) failed to appreciate that the provision for foreseeable loss of Rs 22,55,642 was ascertained liability and not contingent and unascertained liability.*

Disallowance of claim of advisory fee for sale of land: Rs. 2,00,000

5) *For that, the Ld CIT(A) has failed to consider and appreciate that the advisory fee of Rs. 2,00,000/- paid by the appellant was a revenue expenditure and not a capital expenditure*

6) *For that without prejudice to the above, the Ld CIT(A) has failed to consider and appreciate that the advisory fee had been incurred towards sale of land which had been concluded in previous year 2013-14 relevant to AY 2014-15 and that in case such expenditure is disallowed in computation of income for AY 2013-14, the same should be eligible for deduction in the subsequent year as expenditure incurred towards sale of land while computing capital gains as per Section 48 of the Income Tax Act, 1961.*

Initiation of penalty proceedings under section 271(1)(c) of the Act

7) *For that, the Ld. CIT(A) has erred in treating the initiation of penalty proceedings under section 271(1)(c) of the Act as premature at this stage ignoring the fact that the Appellant has neither furnished inaccurate particulars of income nor concealed its income.*

That the Appellant craves leave to add, alter, supplements, amend, modify, substitute and/or rescind the grounds hereinabove before or at the time of hearing of this appeal.

3. We would first take up appeal for the Assessment Year 2009-10 which has been preferred by the assessee challenging the order dated 28.02.2018, passed by the Ld. CIT(A) whereby, inter alia, the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 31.03.2015, passed under Section 263/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Brief facts of the case are that McNally Sayaji Engineering Limited ('MSEL' or 'the Appellant') is the manufacturer of Crushing, Screening, Milling, Material Handling and other heavy equipment serving the core sector industries. The return of income for the

assessment year 2009-10 was filed on 30.09.2009 declaring total income of Rs.189,041,880/- as per the normal provisions of the Act and claiming a refund of Rs.5,448,962/-. Subsequently, the assessee filed the revised return of income on 30.03.2011 declaring a total income of Rs.164,234,158/- as per the normal provisions of the Act and claiming a refund of Rs.1,647/-. The case was selected for scrutiny through CASS and the assessment was completed u/s 143(3) of the IT Act, 1961 on 29.12.2011 at the total income of Rs.20,48,40,900/-. The case was further considered for initiation of proceeding u/s 263 of the IT Act, 1961 by the Ld. CIT on the following issues:

- (i) Non-deduction of TDS u/s 194J against Management fee paid to McNally Bharat Engineering Company Limited during the FY-2008-09,
- (ii) Non-deduction of TDS against Royalty during the FY-2008-09.

3.1 Subsequently the revision order was passed on 26.03.2014 by the Ld. CIT-1, Kolkata and the assessment was set aside on the above two limited issues with a direction to re-assess the allowability of the above two expenses after bringing all the facts and records as per law.

3.2 In the course of the assessment proceedings taken up in consequence to the revision order of the Ld. CIT and after considering the submission of Ld. AR of the assessee, the entire management fee so claimed to the tune of Rs.3,52,76,000/- along with another sum of Rs.1,02,87,073/- was disallowed and added back to the total income of the assessee company for the AY-2009-10. The assessee filed an appeal before the Ld. CIT(A)-1, Kolkata who partly allowed the appeal. Aggrieved with the order of Ld. CIT(A), the assessee has filed this appeal before the Tribunal.

4. Rival submissions were heard and the documents and the submissions/evidences filed were examined. Vide submission filed on

29.11.2023 and another submission dated 22.01.2024 which is similarly worded and was annexed to the submission made on 16 April 2024, it is mentioned under the details pertaining to the background of the case that at the onset, the assessee wished to apprise the Bench it was recently acquired by Tega Group, pursuant to the order dated 24 February 2023 issued by the Hon'ble National Company Law Tribunal, Kolkata Bench ['NCLT'] under the Insolvency and Bankruptcy proceedings which are carried out under the Insolvency and Bankruptcy Code, 2016. Vide order sheet dated 22.01.2024, the Bench had ordered as under:

The present appeals are filed by the assessee agitating certain disallowances made by the Assessing Officer. It is to be noted that during the pendency of the present appeals, the assessee company approached the National Company Law Tribunal (NCLT) for initiation of Corporate Insolvency Resolution Process and thereby, a moratorium had been declared by the NCLT u/s 14 of the Insolvency and Bankruptcy Code, 2016. The Id. Counsel for the assessee has further submitted that the insolvency resolution plan has been approved by the NCLT, Kolkata Bench, vide order dt. 24/02/2023 and thereafter, the company has been acquired by Tega Group. Now, the question which is genuinely raised in many appeals before us is that, at the time of initiation of insolvency and corporate insolvency resolution process and thereafter appointment of resolution professional to manage the affairs of the company as per the provisions of the Insolvency and Bankruptcy Code, 2016, can the statutory Income-tax liability of the applicant company get extinguished or cease to exist without any notice of such insolvency proceedings to the concerned Income-tax Officer or to say without participation and consideration of the statutory liabilities of the applicant/assessee company in the insolvency resolution plan.

Though in other appeals, generally there is outstanding liability of the assessee to the Department and the assessee company generally pleads that in view of the fact that the company has approached the NCLT for insolvency proceedings, therefore, a moratorium has been declared and further that after the approval of the resolution plan, the statutory tax liability of the company towards the Income-tax department has ceased to exist. However, in this case, the Id. Counsel for the assessee claims that if the claim of the assessee is allowed in this appeal, the assessee company now succeeded by Tega Group, will get refund of the taxes deposited. However, in all such appeals before this Tribunal, it has come to the knowledge that the concerned Departmental Representatives/Assessing Officers/Income-tax Authorities, are even not aware of the insolvency proceedings pending or decided in respect of the assessee company and the Department's statutory tax dues toward the assessee are not considered in the resolution plan and it has been generally pleaded by the Department that since the department was not given notice nor was it aware of the insolvency proceedings and, therefore, the Department's claim cannot be defeated. These issues crop up many a times before this Tribunal Therefore, it is directed that the Id. D/R will take up thin issue with the concerned Departmental Authorities/Higher officials of the Department so that the Department's claim cannot be defeated because of the non-participation of the Department in the Insolvency proceedings and further what will be the fate of the department's right to recover taxes after the approval of such insolvency resolution plan wherein the Department's due statutory taxes have not been taken into consideration at the time of submission

or approval of the resolution plan and whether such statutory tax liabilities gets extinguished after the approval of the resolution plan or whether the assessee/successor of the assessee company has got any right to press any claim against the Department after finalization of the resolution plan. It is also to be seen as to whether Section 178 of the Income Tax Act, 1961 (in short 'the Act'), covers the interim resolution professional appointed by the NCLT in the definition liquidator and if 50, and scope whether statutory taxes can of be recovered from such liquidator for non-performance of his duties as per the provision of Section 178 of the Act. The ld. D/R is directed to take up the matter with the higher authorities and get proper instructions in this respect. The ld. A/R is also directed to come prepared and address this bench on the above issues.

Both the parties will be heard on the above issues on the next date of hearing. Case adjourned to 26/03/2024. Copy of this order be supplied to the parties free of cost.

Ordered accordingly.”

4.1 No further submissions were made on the subsequent dates of hearing. However, the Ld. AR filed a copy of the order dated 24th February, 2023 of the NCLT, Kolkata Bench, Court-I, Kolkata in IA(IB) No. 1214/KB/2022 in CP(IB) No. 131/KB/2020 in the matter of ICICI Bank Limited (Financial Creditor) Versus McNally Sayaji Engineering Limited (Corporate Debtor) and in the matter of Jitendra Lohia, Resolution Professional of McNally Sayaji Engineering Limited (Applicant) whereby the resolution plan presented before the NCLT was approved by it as the Adjudicating Authority. On page 4 para 10 thereof under Collation of claims, the total amount claimed and admitted are shown at Rs. 3654,03,57,054.35 and Rs. 412,06,59,575.48 respectively. Out of these, the total Government claims claimed and admitted are mentioned at Rs. 88,68,69,456/- and Rs. 16,08,83,340.48 respectively. The Resolution Plan submitted by Tega Industries Limited was approved with 99.787% voting share. As per the Resolution Plan, as mentioned on Page 15 thereof, the Operational Creditors, who are the Statutory Creditors (Government Dues), are proposed the treatment of Rs. 1,00,000 (Rupees one lakh only) out of the Total Proposed Treatment to all the creditors at Rs. 1,65,37,69,233/-. The Relinquishment/Waiver of liabilities and Approvals are mentioned in Para 28 on Page 17 of the order. As per S. No. 2 thereof, **no Person shall be entitled** to take, initiate, institute **or continue any suits, steps or**

*proceedings against the Corporate Debtor or its Assets (**whether by way of demand, legal proceedings, alternative determination process including arbitration or an expert determination process, the levying of distress, execution of judgment, decree or order, or otherwise**) in any court of law, tribunal, arbitration panel or other authority in any jurisdiction whatsoever (including taking any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property) for the purpose of obtaining payment of any Liability, or for the purpose of placing the Corporate Debtor into liquidation or any analogous proceedings. S. No. 5 mentions that any dues, liabilities, charges, interest, penalty or cost on the Corporate Debtor relating to any period prior to CIRP Commencement Date is deemed to be waived/ written-off and all the cases, show cause notices or proceeding pending at any forum or before any authority against the Corporate Debtor be unconditionally withdrawn on approval of the Resolution Plan. As per S.No.11, any remaining claims, debts and other dues from the Corporate Debtor to any person for the period prior to the Transfer Date, that is not expressly provided for in this Resolution Plan, including any claims from third parties relating to any contract entered into by the Corporate Debtor including damages on account of termination of such contracts pursuant to this Resolution Plan or claims which are in the nature of recovery, disgorgement, penalty, fees or recoupment of loss, shall be deemed to have been extinguished upon approval of this Resolution Plan, without any liability whatsoever on the Corporate Debtor or the Resolution Applicant. There are other reliefs and concessions mentioned in respect of suits, inquiries and investigations and also for the period prior to the transfer date, all noncompliance breaches and defaults of the corporate debtor shall be deemed to be waived by the concerned governmental authorities and immunity shall be deemed to have been granted to the corporate debtor from all proceedings and penalties under all applicable laws for any noncompliance for the period prior to the transfer date and no interest penal implications shall arise due to such noncompliance, default,*

breach prior to the transfer date. Relief and concession relating to Taxation are further specifically provided at S.Nos. 46 to 51. At S.No. 60 it is mentioned that the Resolution Applicant shall have the right to recover and take necessary action of all actionable claims including loans and advances (provided or not provided or written off). Under the Orders at S.No. 34 and 35, it is ordered as is reproduced here under:

34. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

*With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.¹ wherein the Hon'ble Supreme Court has held 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 Govt, any State Govt or any local authority, guarantors and other stakeholders. We place reliance on the recent judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan** wherein it has been inter-alia held that:*

"Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT. all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date."

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. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no

¹ 2021 SCC Online SC 313 decided on 13.04.2021

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.

4.2 Further, as per section 238 of the Insolvency and Bankruptcy Code, 2016, *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.* Thus, the IBC has overriding effects over other laws and hence the appellate proceedings pending in this Tribunal cannot continue and are liable to be dismissed on account of being infructuous and in violation of the provisions of the IBC after approval of the Resolution Plan by the NCLT, more so when the plan has not been disputed by the Revenue in any court of law and has attained finality.

5. Similar finding has been given in several judicial pronouncements in this regard. It has been held in the case of **Maruti Koatsu Cylinders Ltd. v. Deputy Commissioner of Income-tax [2024] 165 taxmann.com 332 (Gujarat)** that when the NCLT has approved the application filed under section 13(6) of IBC, 2016 and resolution plan submitted by the applicant was approved, the Assessing Officer would not have any jurisdiction to reopen the assessment with regard to the assessment year 2019-20. [Para 6]

5.1 It has also been held in **Asian Colour Coated Ispat Ltd. v. Asstt. Commissioner of Income-tax. [2024] 165 taxmann.com 641 (Delhi)** as under:

21. Suffice it to observe that it is not the case of the respondents that the NCLT has been moved for the purposes of recall of its order according approval to the Resolution Plan. It is also not their case that the Resolution Plan insofar as it rings in a closure in respect of any claim or demand that may be said to exist in respect of the corporate debtor is liable to be set aside. In fact, the respondents do not appear to have questioned the validity of the Resolution Plan at any stage. We thus find ourselves unable to appreciate how the decision in Rainbow Papers could come to their aid.

22. *Viewed in the aforesaid light, it is manifest that it is the view taken by this Court in M Tech Developers, Sree Metaliks and Rishi Ganga Power Corporation which would prevail and lead us to the inevitable conclusion that the reassessment action would not sustain.*

23. *We, accordingly, allow the instant writ petition and quash the impugned notice under Section 148 for A.Y. 2014-15 dated 31 March 2021.*

5.2 In **Uttam Value Steels Ltd. v. Assistant Commissioner of Income-tax [2024] 166 taxmann.com 493 (Bombay)** it has also been held as under:

- *Even a plain reading of section 31(1) would show that once the NCLT approves the resolution plan, it would be binding on, among others, the Central Government and its agencies in respect of payment of any statutory dues arising under any law for the time being in force. It is now trite law that the effect of resolution of a corporate debtor is that the terms of resolution bind tax authorities and their enforcement actions – a position in law declared in numerous judgments of the Supreme Court. While it is not necessary to extract from a long line of decisions of the Supreme Court to note the effect of approval of the resolution plan under Section 31 of the IBC, as rightly pleaded by the Petitioner-corporate debtor the judgment in Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited (Ghanshyam Mishra) comprehensively summaries the import of various judgments on the point. [Para 12]*
- *It is therefore crystal clear that once a resolution plan is duly approved under section 31(1), the debts as provided for in the resolution plan alone shall remain payable and such position shall be binding on, among others, the Central Government and various authorities, including tax authorities. All dues which are not part of the resolution plan would stand extinguished and no person would be entitled to initiate or continue any proceedings in respect of any claim for any such due. No proceedings in respect of any dues relating to the period prior to the approval of the resolution plan can be continued or initiated. [Para 15]*
- *In this clear view of the matter, there can be no manner of doubt that the Impugned Proceedings initiated by the revenue and sought to be defended as if they relate to liabilities that somehow emerge after the CIRP, are wholly misconceived and untenable. The resolution plan, upon its approval, brought a quietus to all claims pursued or capable of being pursued by the revenue against the petitioner for any operation prior to the CIRP. The stance of the revenue in the reply affidavit, namely, that if the tax claim amount had not been crystallised, would be future dues and not past dues, is totally untenable. Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited 2021 SCC Online SC 313 makes it clear that the continuation of existing proceedings and the initiation of new proceedings, as they relate to operations prior to the CIRP, are totally prohibited after the*

approval of the resolution plan. Consequently, nothing would survive insofar as the Impugned Proceedings relate to the petitioner. [Para 16]

- *The Ghanshyam Mishra and Sons Private Limited (supra) squarely applies to the facts of the instant case, and necessitates quashing the Impugned Proceedings. Evidently and admittedly, the tax proceedings against the VJ Group pre-date the CIRP and no matter when the liabilities are purported to get crystallised, even if they are allowed to get crystallised, they would relate to the period prior to the approval of the resolution plan of the petitioner, and therefore stand extinguished. This is why the Supreme Court has clearly ruled that initiation and continuation of proceedings relating to the period prior to the approval of the resolution plan cannot be indulged in. Upon completion of the CIRP, the petitioner has completely changed hands and has begun on a clean slate under new ownership and management. [Para 18]*

5.3 Further, the Coordinate Bench 'C' of the Tribunal in the ITAT KOLKATA in the case of **Kohinoor Steel (P.) Ltd. V. Income-tax Officer [2024] 159 taxmann.com 571 (Kolkata – Trib.)** have also held as under:

- *It was observed that the operational creditor of assessee has filed the petition before the NCLT and as per the assessee's own case for its CRIP as per rule 4 of Insolvency & Bankruptcy Code (IBC), 2016 no proceedings can continue against the corporate debtor i.e. the assessee after the order of the NCLT. In view of this and drawing further force from the order of co-ordinate bench of Tribunal in the case of Palogix Infrastructure (P.) Ltd. V. Asstt. CIT [2022] 135 taxmann.com 73/193 ITD 329 (Kol. – Trib.) 2021 (10) TMI 1255-ITAT – KOLKATA, dated 27-10-2021 all the appeals before the Tribunal filed by the assessee is to be dismissed as infructuous. [Para 9]*
- *It is pertinent to note that as per the provisions of section 14 of the IBC Code institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority shall be prohibited during the moratorium period. [Para 9.1]*
- *Further, it is found that section 31 of the IBC relates to approval of the resolution plan and in terms of section 31(1) of the IBC on approval, the resolution plan becomes binding on corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force. The Supreme Court in the matter of Ghanashyam Mishra & Sons (P.) Ltd. V. Edelweiss Asset Reconstruction Co. Ltd. [2021] 126 taxmann.com 132/166 SCL 237 (SC) [2021] 9 SCC 657 has considered the scope of section 31 (1) of the IBC and has held that once the resolution plan is sanctioned under section 31(1) of the IBC, the claims provided in the plan will*

stand frozen and all such claims which are not part of the plan will stand extinguished. [Para 9.2]

- *The law is well settled that on the approval of the resolution plan in terms of section 31 of the IBC, the dues including the statutory dues of the Government or local authority, if not part of the resolution plan, gets extinguished and no proceedings in respect thereof for a period prior to the date of approval under section 31 would continue. The decision of the Calcutta High Court in West Bengal State Electricity Distribution Company Ltd. V. Sri Vasavi Industries Ltd. [2022] 143 taxmann.com 96/174 SCL 199 2022 (7) TMI 580 – CALCUTTA HIGH COURT makes it clear that any claim not made during the course of CIRP and before approval of resolution plan shall automatically be extinguished and the corporate debtor is deemed to start its operations with a clean slate after the resolution plan is approved. [Para 9.5]*
- *The provisions of section 238 of the IBC 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. It has been consistently held by the Supreme Court that the IBC is a complete Code in itself and in view of the provisions of section 238 of the IBC, the provisions of the IBC would prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force. [Para 9.7]*
- *As per section 31 of the Code, resolution plan as and when approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the resolution plan. Thus, this will prevent State authorities and Regulatory bodies including Direct & Indirect Tax Departments from questioning the resolution plan. Thus, in view of the above, no proceedings can be initiated against the corporate debtor, that is, assessee-company including income tax proceedings and recovery of demand or giving effect of any order. It is well settled now that IBC has an overriding effect on all the acts including Income-tax Act which has been specifically provided under section 178(6) as amended with effect from 1-11-2016. [Para 9.8]*
- *A reading of the provisions under sections 13 and 14 of the Code along with the decision in Ghanashyam Mishra & 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 continuation of the proceedings under the Code. [Para 9.9]*
- *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 assessee. Therefore, the leave is to be granted to the*

assessee to seek the restoration of the appeal, if necessitated by the orders in the CIRP. [Para 9.10]

- *The issue of limitation in filing fresh appeal, if need be, has already been dealt with by the Supreme Court in NDMC v. Minosha (India) Ltd. [2022] 138 taxmann.com 73/172 SCL 675/8 SCC 384 wherein on consideration of section 60(6) of the Insolvency and Bankruptcy Code, 2016, it was held that the entire moratorium period will be excluded in computing limitation in respect of proceedings at the hand of a corporate debtor. However, the Assessing Officer is at liberty to make an application for re-institution of the instant appeal if resolution process ends in IBC, 2016. Accordingly, the appeal of the assessee is to be dismissed as infructuous. [Para 9.11]*

6. Hence, in view of the legal provisions under the IBC, 2016, since the resolution Plan has been approved by the Adjudicating Authority, all proceedings pending in respect of the Corporate Debtor (CD), i.e. the assessee are barred thereafter and cannot be allowed to continue. Only the claims made as per the plan can be recovered. As regards the refund, if any arising on account of a favourable order is concerned, the Successful Resolution Applicant, i.e. Tega Industries Limited is entitled to pursue all actionable claims in favour of the assessee/CD after the approval of the plan. Hence, the appeal filed by the assessee in ITA No. 899/Kol/2018 for AY 2009-10 cannot continue and is dismissed on account of being infructuous.

7. As the facts for AY 2013-14 are also similar, the appeal in ITA No. 1145/Kol/2018 is also dismissed on account of being infructuous in view of our finding in the preceding paras and the conclusion drawn in para 6 in the appeal for AY 2009-10.

8. In the result, both the appeals are dismissed.

Order pronounced in the open court on 3rd October, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 3rd October, 2024

AK, P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata