

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : C : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.1147, 1149 & 1148/Del/2024  
Assessment Years: 2013-14, 2016-17 & 2018-19

Jasrati Education Solutions Ltd.,  
514, Udyog Vihar Phase-III,  
Gurgaon,  
Haryana – 122 001.

Vs National Faceless Assessment  
Centre,  
Delhi..

PAN: AAACP1698Q

(Appellant)

(Respondent)

Assessee by : Shri Gaurav Jain, Advocate &  
Shri Rahul Prabhakar, Advocate  
Revenue by : Shri Dayainder Singh Sidhu, CIT-DR  
Date of Hearing : 13.03.2025  
Date of Pronouncement : .03.2025

**ORDER**

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the assessee against the orders dated 05.02.2024 of the Commissioner of Income-tax (Appeals), NFAC, (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeals No.NFAC/2012-13/10064246, NFAC/2015-16/10055104 and NFAC/2017-

18/10114649, arising out of the appeals before it against the orders dated 27.09.2021, 27.09.2021 and 30.04.2021, passed u/s 147 r.w.s. 144B, u/s 147.r.w.s. 144B and u/s 143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), respectively, by the National Faceless Assessment Centre, Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record. It comes up on hearing both the sides that primarily the issue determined by the ld. CIT(A) and now asserted before us is as to what is the consequence of conclusion of insolvency proceedings initiated by appellant which was formerly known as M/s Educomp Infrastructure & Schools Management Ltd., on the impugned assessment orders for respective AY involved in these appeals. Pertinent to mention is that appeals before the ld. CIT(A) were filed in the name of M/s Jasrati Education Solutions Limited and so are filed now.

3. The facts necessary for disposal of these appeals are that in regard to AY 2013-14, assessment u/s 143(3) was completed on 20.05.2015 and in AY 2016-17, return of the assessee was processed u/s 143(1) of the Act on 25.08.2017 and the return for AY 2018-19 was filed on 31.10.2018 and notice u/s 143(2) was issued on 22.09.2019. In regard to AY 2013-14 and AY 2016-17 notice u/s 148 was issued on 20.03.2020 and 19.03.2020 respectively. The CIRP proceedings had also taken in case of the assessee on 25.04.2018 and a

moratorium u/s 14 of Insolvency and Bankruptcy Code (IBC) was passed. On 24.05.2018, Insolvency Resolution Professional constituted the Committee of Creditors (COC) and very first meeting was held. In due course on 19.09.2019 Resolution Plan of successful resolution was passed and, thereafter, on 23.09.2019 the COC had given approval to the Resolution Plan in favour of Mr. Paramjit Gandhi. Thereafter, on 14.12.2020, the Resolution Plan as approved by the COC u/s 30(4) of IBC was approved and order u/s 31(1) of IBC was passed. Thus, we find that after the completion of Resolution Plan, notice u/s 148 of the Act were issued for AY 2013-14 and 2016-17 and notice u/s 143(2) was issued for AY 2018-19. Further, in regard to AY 2018-19, assessment was completed u/s 143(3) on 30.04.2021 and reassessment u/s 147 was completed in AY 2016-17 and AY 2013-14 on 27.09.2021. The assessee had approached by way of appeal before the Id.CIT(A) in AY 2013-14 and 2016-17 on 15.10.2021 and in AY 2018-19 on 13.04.2022. On 05.02.2024 the impugned orders were passed by the NFAC and on 13.03.2024 the appeals in all the three years are filed before this Tribunal.

3.1 The case of assessee is that in view of the aforesaid approved plan, no tax liability survived or could have been raised for the years under consideration, being falling prior to the commencement date of CIRP process. Accordingly, the aforesaid factum was communicated to the NFaC, in response to notice

under section 142(1) of the Act that the dues for the period prior to the date of approval of Resolution Plan stood frozen, upon the approval of the resolution plan by NCLT and dues for the prior period stand extinguished. It was submitted that in view of the law as set out in the decisions of the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited Through the Authorized Signatory V. Edelweiss Asset Reconstruction Company Limited Through the Director & Ors. CIVIL APPEAL NO.8129 OF 2019** and Section 31 of the IBC read with non- obstante clause provided under section 238 of the IBC, the Revenue is not entitled to any claim any dues prior to the date of approval of resolution plan.

4. Aggrieved by the impugned Assessment Order, the assessee has preferred appeals before Id. CIT(A), challenging the demands consequent to IBC proceedings being void but failed. The relevant observation of Ld. CIT(A) being on the basis of decision of ITAT 'B' Bench, Chennai decision in the case of M/s. Thiru Arooran Sugars Ltd vide order under ITA No. 1892/Chny/2019 dated 31.03.2023 for A.Y. 2008-09 where the bench had held that since the appeal filed by the Revenue after the moratorium period is not maintainable and hence dismissed. Ld. CIT(A) has relied the same and dismissed the appeals of assessee. As for convenient reference we reproduce the para 5.3 to para 6 from

the impugned order of Id. CIT(A) for AY 2013-14, which is common to other AY, except the paragraph number being different:-

*“5. Determination and Decision :*

*5.1 All the Grounds of Appeal are related to disallowance of Rs. 39,80,47,655/- u/s. 56(2)(viib) rwr 11U & 11UA(2) of the Act, on account of excess consideration received towards share premium and further Rs. 1,40,00,000/- on account of unexplained payment made to M/s. Bhagawati Trading Co (Prop. Sanjiv Yadav). I have gone through the facts of the case and submissions filed by the Appellant and my decision is as under.*

*5.2 In the case of the Appellant, Return of Income for A.Y. 2013-14 was filed on 30.11.2013 declaring total income at (-) Rs. 10,50,68,978/-. Scrutiny assessment u/s. 143(3) was also completed vide order dated 20.05.2015 computing loss at (-) Rs. 8,61,21,015/-. However, based on the subsequent information available with the Department, case was reopened by issue of Notice u/s. 148 dated 20.03.2020. The assessment was completed vide order u/s. 147 dated 27.09.2021 after making a disallowance of Rs. 39,80,47,655/- u/s. 56(2)(viib) rwr 11U & 11UA(2) of the Act, on account of excess consideration received towards share premium and further Rs. 1,40,00,000/- on account of unexplained payment made to M/s. Bhagawati Trading Co (Prop. Sanjiv Yadav) and income was assessed at Rs. 32,59,26,640/-.*

*5.3 The appellant vide his submission dated 04.08.2022, available on ITBA portal has stated as under :-*

*A.1 The Appellant – Educomp Infrastructure & Schools Management Limited (formerly known as ‘Educomp Infrastructure Private Limited’), hereinafter referred to as “EISML” or the “Appellant”, was incorporated on September 2, 2006 under the Companies Act, 1956, with the object of developing and managing school assets across the country. It leases out school infrastructure to educational trusts/societies, which operate the schools and pay rentals/fees to the Appellant.*

*A.2 During AY 13-14, EISML issued 11,81,453 fresh equity shares at a premium of Rs. 676 per share. Since this issue, the assessee has had several changes in its structure, management, cash flow positions etc.*

*A.3 Subsequently, the Appellant underwent a corporate insolvency resolution process pursuant to an Order dated April 25, 2018 passed by the Hon’ble National Company Law Tribunal (hereinafter referred to as*

“NCLT”). Mr. Ashwini Mehra, was appointed as the Resolution Professional for EISML as per the order of the NCLT dated June 15, 2018. A Resolution Plan for the resolution of EISML has been approved by the Hon’ble NCLT, Chandigarh on December 14, 2020 and as per the Insolvency and Bankruptcy Code, 2016, the office of the resolution professional has become functus officio and a Monitoring Committee has been constituted as per the terms of the resolution plan approved by the Hon’ble NCLT, Chandigarh. However, the Resolution Applicant is yet to take reins and official charge of the company and hence, Mr. Mehra is acting as the authorized signatory for Educomp, in the capacity of Chairman of the constituted Monitoring Committee.

A.4 The Appellant persistently stated the aforementioned fact in various submissions previously filed by EISML before the Ld. AO for AY 13-14 along with the relevant judicial precedents which clearly state that once a resolution plan is duly approved by the Adjudicating Authority under Section 31(1), the claims as provided in the resolution plan shall be 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 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 of a claim, which is not part of the resolution plan.

A.5 The Resolution Plan approved by NCLT also states that all dues arising in relation to the provisions of Incometax shall be permanently settled by attributing a NIL value to them and the Appellant shall not be liable to pay any other amount against such demand.

A.6 Upon approval of this Resolution Plan by the NCLT, any and all rights and entitlements of, claims or demands made by or liabilities or obligations owed or payable to, any government agencies, whether filed/ admitted/ verified or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, on the Insolvency Commencement Date, shall stand permanently settled by attributing a NIL value to them and the Appellant shall at no point of time, directly or indirectly, have any other obligation, liability or duty in relation thereto.

5.4 In the similar facts of the case, the Hon’ble ITAT, ‘B’ Bench, Chennai in the case of M/s. Thiru Arooran Sugars Ltd vide order under ITA No. 1892/Chny/2019 dated 31.03.2023 for A.Y. 2008-09 has held that since the appeal filed by the Revenue after the moratorium period is not

*maintainable and hence dismissed. The relevant contents of the said order is extracted as under :-*

5. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The fact with regard to liquidation of company by a final order of the Hon'ble NCLT dated 08.04.2021 is not disputed by the Revenue. Further, it is an admitted fact that in terms of sec.238 of the Insolvency & bankruptcy Code (in short "I & B Code") r.w.s. 178 of the Act, the provisions of the code have an overriding effect overall other central & state statutes and this legal position has been upheld by the Hon'ble Supreme Court in the case of PCIT v. Monnet Ispat and Energy Ltd., in SLP No.6483 of 2018 order dated 10.08.2018. Therefore, the present appeal filed by the Revenue during moratorium period is **ab initio** and deserves to be dismissed. Further, apart from the liquidation process, the liabilities of the respondent company have been crystalized and the net assets were transferred to a new investor pursuant to a scheme u/s.230(1) of the Companies Act 2013 approved by the Hon'ble NCLT vide order dated 02.05.2022. In view of the Hon'ble NCLT order dated 02.05.2022, pending proceedings including proceedings under Income Tax Act, 1961, relating to period prior to the NCLT order shall abate all the admitted liabilities shall be dealt as per the order of the Hon'ble NCLT in terms of waterfall mechanism prescribed u/s.53 of the I & B Code. At this stage, it is necessary to rely on the decision of the Hon'ble Supreme Court in the case of Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., in Civil Appeal No.8129 of 2019 order dated 13.04.2021, wherein the Apex Court has held that once resolution plan is approved by adjudicating authority u/s.31 of I & B Code, the claim has been provided in the resolution plan shall stands frozen and will be binding

on the corporate debtors and its employees, members, creditors, including Central Government. In this case, the Hon'ble NCLT ordered liquidation of respondent company under I & B Code and further, the claim of the Department has been rejected. Therefore, we are of the considered view that appeal filed by the Revenue after the moratorium period is not maintainable and thus, the appeal filed by the Revenue is dismissed as not maintainable.

6. In the result, appeal filed by the Revenue is dismissed.

**CO No.92/Chny/2019:**

7. Since the appeal filed by the Revenue has been dismissed as not maintainable, the Cross-Objection filed by the assessee against the order of the Ld.CIT(A), is also not maintainable and thus, Cross-Objection filed by the assessee is dismissed as not maintainable.

8. In the result, appeal filed by the Revenue in ITA No.1892/Chny/2019 & Cross-Objection filed by the assessee in CO No.92/Chny/2019 for the AY 2008-09 are dismissed as not maintainable.

Order pronounced on the 31<sup>st</sup> day of March, 2023, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 31<sup>st</sup> March, 2023.

**Sd/-**

(मंजूनाथाजी)

**(MANJUNATHA.G)**

लेखा सदस्य/ACCOUNTANT MEMBER

*5.5 In the instant case, the Appellant underwent a Corporate Insolvency Resolution Process (CIRP), pursuant to the order under section 10 of IBC dated 25th April, 2018 passed by the NCLT. As per the provisions of Insolvency and Bankruptcy Code, 2016, Committee of creditors sanctioned the Resolution Plan. Subsequently, the Resolution Plan was approved by the Committee of Creditors u/s. 30(4) of the Code, 2016 which was further approved by the Adjudication Authority i.e. NCLT u/s. 31(1) of the Code vide order dated 14.12.2020.*

*5.6 In the instant case it is noted that the appeal is filed on 15.10.2021, which is filed after the moratorium period. Respectfully, following the order of Hon'ble ITAT, 'B' Bench, Chennai in the case of M/s. Thiru Arooran Sugars Ltd vide order under ITA No. 1892/Chny/2019 dated 31.03.2023 for A.Y. 2008-09, the present appeal filed by the appellant is to be treated as non maintainable and hence dismissed. Further, the AO is directed to go through the order of NCLT and take necessary action as per law.*

*6. In the result, the appeal of the appellant is treated as non-maintainable and hence Dismissed.”*

5. Now assessee is in appeals before this tribunal and grounds of ITA 1147/DEL/2024 for AY 2013-14, which are common with other AYs, are reproduced below:-

*“1. That the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (CIT(A)) has erred on facts as well as in law in dismissing the appeal as nonmaintainable on the ground that Resolution Plan of the Appellant company stood approved by National Company Law Tribunal (NCLT), even prior to filing of the subject appeal before CIT(A) on 15.10.2021.*

*2. That the CIT(A) has erred on facts as well as in law in dismissing the appeal as non-maintainable, on ground mentioned above, instead of allowing the appeal of the Appellant company by following the Resolution Plan of the appellant as approved by the NCLT under section 31 of Insolvency and Bankruptcy Code, 2016 on 14.12.2020 which nullified the tax liability of the appellant company for the year under consideration, which prevailed upon and was binding on tax authorities in terms of section 238 of Code, 2016.*

*3 That the CIT(A) has erred on facts as well as in law in dismissing the appeal in not appreciating that the appeal was to be allowed and not dismissed as non-maintainable, due to approval of Resolution Plan, since the Assessment Order was to be quashed/reversed in order to give effect to Resolution Plan through a proper remedy available in law which included the allowance of appeal by CIT(A) under section 250 of the Act.*

*4 That the CIT(A) has erred on facts as well as in law in dismissing the appeal as non-maintainable without providing the opportunity of being heard to the Appellant .”*

6. Now what we find relevant is that assessee underwent a Corporate Insolvency Resolution Process (CIRP), pursuant to the order under section 10 of Insolvency and Bankruptcy Code (IBC) on April 25, 2018 passed by the NCLT. As per the provisions of IBC, Committee of Creditors sanctioned the Resolution Plan proposed by Mr. Parmjit Gandhi, under section 30(4) of the Code, 2016. Subsequently, the aforesaid Resolution Plan was approved by the Committee of Creditors under section 30(4) of the IBC, which was further approved by the Adjudication Authority, i.e. NCLT under section 31(1) of the IBC vide order dated 14.12.2020. Post initiation of CIRP process, pursuant to order dated 25.04.2018 passed by the NCLT when the period of moratorium against the Appellant for institution of any litigation commenced and its completion thereof on approval of the Resolution Plan by the order dated 14.12.2020 passed by the NCLT, the AO initiated the reassessment proceedings under section 147 through issue of notice dated 19.03.2020 under section 148 of the Act for AY 2016-17 and vide notice dated 20.03.2020 for AY 2013-14. Notice u/s 143(2) of the Act was issued on 22.09.2019 for AY 2018-19. Thereafter, the statutory notices were issued under the Act but after the approval of Resolution Plan by NCLT.

7. As we take into consideration the Resolution Plan, dated 14.12.2020, copy of which is available at Page no. 19 to 56 of the PB we find that following relevant clauses are found;

*“3.2.6 Governmental dues*

*(i) Upon approval of this Resolution Plan by the NCLT, any and all rights and entitlements of, claims or demands made by or liabilities or obligations owed or payable to, any government agencies, whether filed/admitted/verified or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, present or future, on the Insolvency Commencement Date,, shall stand permanently settled by **attributing a NIL value to them** and they would stand settled and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any other obligation, liability or duty in relation thereto.*

*(ii) Upon approval of this Resolution Plan by the NCLT, all dues under the provisions of Income Tax Act, 1961, in relation to any period prior to the Insolvency Commencement Date, shall stand permanently settled by **attributing a NIL value to them** and the Corporate Debtor shall not be liable to pay any other amount against such demand.*

*(iii) Upon approval of this Resolution Plan by the NCLT, all dues under the provisions of all the indirect taxes, in relation to any period prior to the Insolvency Commencement Date, shall stand permanently settled by **attributing a NIL value to them** and the Corporate Debtor will not be liable to pay any other amount against such demand.*

.....

*11. Relief sought under Resolution Plan*

*The Applicant proposes to pray before the Hon’ble NCLT to grant the following relief under the Resolution Plan:*

*11.1 In relation to direct and indirect taxes including but not limited to The Income Tax Act 1961, Goods and Services Tax, Excise Duty etc.*

- a) *Income tax benefits as permitted under section 79 and any other applicable provisions of the Income Tax Act, 1961 for set off of unabsorbed depreciation, carry forward and brought forward losses.*
- b) *MAT under section 115JB of the Income Tax Act.*

*11.2 All assessments / appellate or other proceedings pending in case of the Corporate Debtor, on the date of the order of NCLT relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered to be not payable by the Corporate Debtor.*

*11.3 All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the date of NCLT order and pending on that date, shall stand abated and should not be proceeded against.*

*Post the order of the NCLT, no re-assessment/ revision or any other proceedings under the provisions of the Income Tax Act shall be initiated on the Corporate Debtor in relation to period prior to acquisition of control by the Resolution Applicant and any consequential demand should be considered non-est, void, incapable of demands and not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of the insolvency process or otherwise shall not be revived after the order of NCLT.*

*11.4 All the demands, show causes, arbitral claims or litigation whatsoever, whether present or future whether disclosed or not, pursued by any government, semi-government, statutory authority, etc against the Corporate Debtor prior to the Completion Date shall stand withdrawn and abated and the Corporate Debtor shall not be required to make any payments in relation to demands, show causes, arbitral claims or litigation whatsoever. The governmental authorities in such an event shall not be eligible to prevent the Resolution Plan from becoming operative and shall be liable and obligated to continue to facilitate the corporate Debtor as a going concern*

.....

*11.7 Extinguishment of all the outstanding liabilities of the Corporate Debtor existing on the Completion Date with respect to operational creditors, including the government, workmen and employees in respect of which either no claim(s) have been filed by such operational*

*creditor(s) or the claim(s) filed have not been accepted by the Resolution Professional till the date of the approval of the Resolution Plan by the Committee of Creditors.*

.....  
**12.3 Disbursement Schedule**

*Simultaneously the Resolution Applicant shall disburse Rs. 365.00 Crores and CIRP cost if required, in accordance with the terms and conditions of this Resolution Plan and in the order of priority given below:*

S. No	Particulars	Claims Received (Net of Rejections) (Rs. Cr)	Claims Admitted (Rs. Cr)	Resolution Plan (Rs. Cr)	Remarks
1	CIRP Cost		-	-	To be paid as per clause 3.2.1 of the Resolution Plan
2	Operational Creditors	5.08	0.43	1.00	To be paid as per clause 3..2.4 of the Resolution Plan
3	Statutory/ Government dues	-	-	-	To be paid as per clause3.2.6 of the Resolution Plan
4	Employees/ Workmen	0.12	011	0.12	To be paid as per clause 3.2.5 of the Resolution Plan
5	Financial Creditors (Upfront)		904.94	499.88	To be paid as per clause 3.2.3 of the Resolution Plan
	Total			501.00	

8. Then we find that when final order u/s 30(4) of IBC was passed NCLT had ordered in para 45 and 46 as follows;

*“45. In view of the above discussion, the resolution plan as approved by the CoC under Section 30 (4) of the Code is hereby approved. The resolution plan so approved shall be binding on the 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 the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.*

*46. Under the provisions of Section 31 (3) of the Code, we also direct as under:-*

*a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 25.04.2018 shall cease to have effect; and*

*b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database. CA No. 898/2019 is disposed of.”*

9. It is now settled that as per Section 31(1) of the IBC, once the resolution plan is approved by the Adjudicating Authority, it shall be binding on the 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 the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

10. When the relevant clauses of resolution plan as reproduced above are taken into consideration there is no dispute left that the resolution plan provided NIL value to the income tax dues and same stands approved by NCLT. Thus the same shall be binding on the Income Tax Department. Consequently, after going through the above process, the Management of the Company is expected to begin with a ‘clean slate’ which essentially means that the business of the

Corporate Debtor, is revived again and is expected to start afresh by the new management.

11. A co-ordinate bench at Delhi, on which one of us, the Judicial Member was also in quorum, has discussed and determined the issue of validity of assessments subsequent to IBC proceedings and we consider it appropriate to rely the same. The relevant part from it in **ACIT (OSD) versus GAIL Mangalore Petrochemicals Ltd. ITA2843/Del/2024 order dated 08.01.2025** also reported in [2025] 171 taxmann.com 17 (Delhi-Trib) is reproduced below:-

*“12. Ld. AR has drawn attention to the relevant clauses of the Resolution Plan, dealing with the treatment of government/ statutory dues, made available at page 59 to 60 of PB:*

*"4.4. Treatment of Government/ Statutory Dues 4.4.1. Pursuant to the settlement of the Statutory Creditors as per Clause 4.3.5 of Part D above and on Effective Date, all the dues under the provisions of Income Tax Act, 1961, 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 income tax authorities or not, asserted or unasserted, crystallized or uncrystallised, known, or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Closing Date, shall stand extinguished and the Corporate Debtor or Resolution Applicant shall not be liable to pay any amount against such demand.*

*4.4.2. All assessments/ appellate or other proceedings pending in case of the Corporate Debtor, on the Effective Date, relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered to be not payable by the Corporate Debtor in relation to the period prior to the Effective Date and pending on that date shall stand abated and should not be proceeded against. Post the Effective Date, no re-assessment / revision or any other proceedings under*

*the provisions of the Income Tax Act shall be initiated on the Corporate Debtor in relation to period prior to acquisition of control by the Resolution Applicant and any consequential demand should be considered non- existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the order of NCLT.*

*4.4.3. Any and all rights and entitlements of the Governmental Authorities including but not limited to the Central government, the State governments any regulatory or local authority or body or any agency or instrumentality thereof, or any other party or entity (under any agreement, lease, licence, approval, consent or permission) whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Effective Date, shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto."*

*13. Now what is relevant is that as per the Resolution Plan, the Effective Date shall mean the date of approval of the Resolution Plan by the NCLT and as per the Resolution Plan, the Closing date shall mean 89 (eighty-nine) days from the Effective Date. Resolution Plan provided for two assurances to the Resolution Applicant (i.e. GAIL) of the Respondent Company:*

- a) All proceedings under the Act, pending on the date of approval of Resolution Plan by the NCLT (unless otherwise specifically stated/ agreed to/ dealt with in the Resolution Plan), relating to any period prior to that date, shall stand terminated, and all consequential liabilities/ demand, if any, shall stand abated; and*
- b) All dues under the Act, in relation to any period prior to the Closing date (i.e. 89 days from the date of approval of Resolution Plan by the NCLT) shall stand extinguished and the Respondent Company shall not be liable to pay any amount against such demand. In other words, any dues/ demands raised even subsequent to the date of approval of the Resolution Plan (but within 89 days therefrom) shall also stand extinguished.*

*14. It is a settled law that once the Resolution Plan has been approved by the NCLT, new claims of the Tax Department cannot be considered. This position has been upheld by the Hon'ble Supreme Court in the case of*

*Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (2021) (13 S.C.R. 737) (SC). The relevant extracts of the Hon'ble Supreme Court judgement are as follows:*

*"86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 1, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the NCLT is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the NCLT can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. 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. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable*

## CONCLUSION

*95. In the result, we answer the questions framed by us as under:*

- (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) ...

*(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 NCLT grants its approval under Section 31 could be continued. "*

*(Emphasis supplied)*

*15. The similar view has been taken by the Hon'ble Supreme Court in the case of Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors. (2019) (16 S.C.R. 275) (SC). It has been held by the Hon'ble Supreme Court that:*

*"67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/ Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."*

*[Emphasis supplied)*

*16. Ld. AR has drawn our attention to the decision of Hon'ble Delhi High Court in the case of TUF Metallurgical Pvt. Ltd. vs. UOI (W.P.(C) 10528/2022) & connected matter where Hon'ble High Court has also applied the principles laid down by the Hon'ble Supreme Court in the case of Ghanashyam Mishra (supra) and held as follows:*

*"8. In the present cases, as described above, the admitted factual matrix is that the notices and orders impugned in these writ petitions pertain to the income tax claims of the respondents/revenue pertaining to the period much prior to the date of approval of the Resolution Plan. The impugned notices*

*and orders were issued by the respondents/ revenue admittedly subsequent to the public announcement under Section 15 of the Code regarding CIRP process pertaining to the petitioner/assessee. As noted above, pertaining to the WP(C) 10528/2022, the public announcement under Section 15 of the Code called for submission of claims by 21.01.2019, but the respondents/revenue did not file any claim till that date or even thereafter; it is only subsequent to approval of the Resolution Plan vide order dated 05.11.2019 of the Tribunal, (which order was communicated to respondents/revenue on 02.12.2019) that the respondents/revenue issued the impugned Assessment Order and Demand Notice both dated 12.12.2019. Similarly, in the other writ petition WP(C) 10628/2022, the impugned notices and orders were issued by the respondents/revenue much subsequent to the public announcement dated 30.09.2019 of commencement of CIRP under Section 13 of the Code; vide order dated 21.02.2022, the Tribunal approved the final Resolution Plan and that order was communicated by the petitioner/ assessee to the respondents/revenue, calling upon the latter to withdraw the earlier notices, but to no avail.*

*9. In nutshell, the Resolution Plans qua the petitioners/ assessees having been approved by the National Company Law Tribunal on 05.11.2019 (in WP(C) 10528/2022) and on 21.02.2022 (in WP(C) 10628/2022), the tax claims pertaining to the Assessment Year 2017-18 (in WP(C) 10528/2022) and Assessment Year 2014-15 (in WP(C) 10628/2022) stood extinguished.*

*10. The argument on behalf of respondents/revenue that being the State exchequer, it cannot be bound by the Resolution Process provisions of the Code has been recorded only to be rejected in view of the above quoted extract from the judgment in the case of Ghanshyam Mishra (supra)."*

*17. The similar view has been taken by the Hon'ble High Court of Calcutta also in the case of Principal Commissioner of Income-tax vs. Subhlabh Steels (P.) Ltd. [2022] 141 taxmann.com 190 (Cal.) (HC).*

12. Apart from above we find that NFAC has passed the impugned orders by relying a decision which had no bearing. There is no justification in drawing analogy with the non maintainability of appeal of revenue before the Tribunal, during moratorium period, with the challenge of an assessment order by the assessee before the 1d. First Appellate Authority. Appeal of assessee before

CIT(A) is always considered to be continuation of assessment proceedings for the co-terminus powers of AO exercised by the CIT(A), thus appeal of assessee could not have been dismissed with direction to follow NCLT orders.

13. At the same time we are of considered view that what NFAC has done at time of dismissal of appeals of assessee by impugned order is somehow beneficial to the assessee as in the light of aforesaid settled proposition of law, the ld. AO, if has to take a call on the basis of NCLT order only, then as such there is no enforceable demand left after the acceptance of resolution plan. Now as department has not challenged the aforesaid direction of NFAC by way of any appeal, the ld. AO, can only treat the demands for these AYs to be NIL.

14. In fact we are aware of the fact that there has been legislative intervention also in case of such matters and Finance Act, 2022 inserted Section 156A to the Act to provide that the Assessing Officer shall modify the demand payable in conformity with the order of the Adjudicating Authority ('AA' or 'NCLT') and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any, and such notice of demand shall be deemed to be a notice under section 156 of the Act. Hence the order passed by the AA approving a Resolution Plan shall be complied by the Assessing Officer and the revised demand notice in accordance with the resolution plan duly approved by the AA

shall be issued by the Assessing Officer under Section 156 of the Income Tax Act, 1961.

15. Thus we are of considered view that as there was no claim of department adjudicated during resolution proceedings and infact the dues or demands of the department were quantified at NIL, the NFAC should have quashed the impugned assessments instead of dismissing the appeals as non-maintainable, and then giving ld.AO liberty to just follow the NCLT order.

16. We accordingly sustain the grounds and allow the appeals. Consequently the impugned assessments involved in the appeals are quashed.

Order pronounced in the open court on 21.03.2025.

Sd/-

(M. BALAGANESH)  
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 21<sup>st</sup> March, 2025.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi