

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 664 & 665/KOL/2023
Assessment Year: 2013-14 & 2014-15**

I.T.O, Ward-8(2), Kolkata	Vs.	M/s. Sarga Hotel Private Limited
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: AAICS3034R		

Appearances:

Assessee represented by : None.

Department represented by : Praveen Kishore, CIT(THE LD. DR).

Date of concluding the hearing : 30-December-2025

Date of pronouncing the order : 31-December-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

These two appeals filed by the Revenue are against the separate orders of the Commissioner of Income Tax (NFAC), Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2013-14 & 2014-15 dated 16.03.2023, which have been passed against the assessment orders u/s 143(3) of the Act, dated 29.02.2016 and 16.12.2016, respectively. Since both the appeals were heard together, they are being decided vide this common order for the sake of convenience and brevity.

1.1 The Registry has informed that the both the appeals are delayed by 49 days. Along with the appeal memo, the Revenue has filed an application seeking condonation of delay. The reasons mentioned are



that the Ld. CIT(A) had passed the order in Appeal No ITRINFAC/S/250/2022-23/1050830338(1) on 16.03.2023 through ITBA. It is stated that the order of the Ld. CIT(A) had neither been communicated to the stakeholder nor any alert on passing the order by the Ld. CIT(A) had been sent either through SMS or through e-mail or through any other mode by the Departmental system network to the stakeholder. It is further mentioned that the orders of Ld. CIT(A)s are downloaded from the system on manual checking basis. During the period from January, 2023 to May, 2023, the Ld. AO was under pressure of disposing time barring matters. For this reason and due to non-availability of sufficient system resources, the searching of appeal order in ITBA systems could not be done on a regular basis. The appeal vide ITA No.664/KOL/2023 dated 04-07-2023 has been filed after completion of all Departmental formalities. Documents filed before the ITAT contain a certificate issued by the Ld. PCTT-1, Kolkata on date of receipt of appellate order by his office, which is requested to be relied upon. It is prayed that there were sufficient causes for not presenting the appeal within due time and the appeal may kindly be heard on merit for the interest of revenue. On going through the petition, we are satisfied that the Revenue had sufficient cause for the delay, the delay is condoned and the appeal is admitted for adjudication.

2. The Revenue is in appeal before the Tribunal raising the following grounds of appeal:

I. ITA No. 664/KOL/2023:

“1 On the facts and in the circumstances of the case Ld. CIT(A) (NFAC) Delhi is erred in not considering disallowance made by the AO on account of business expenditure of Rs 6,23,23,653/- whereas the assessee is yet to commence its business as the setting up of five star hotel is not completed

2 On the facts and in the circumstances of the case Ld. CIT(A)(NFAC) Delhi is erred in providing relief to the assessee by allowing the capital expenditure of Rs.6,35,92,679/- charged to the profit and loss account which was adjusted to interest income of Rs.6,23,23,653/- from fixed deposit made by the fund obtained from long term borrowing.

3 That the appellant craves leave to add/ or alter, amend, modify or rescind the grounds here in above before or hearing of this appeal.”

II. ITA No. 665/KOL/2023:

“1. On the facts and in the circumstances of the case Ld CIT(A)(NFAC) Delhi is erred in not considering disallowance made by the AD on account of business expenditure of Rs. 3,73,59,866/- whereas the assessee is yet to commence its business as the setting up of five star hotel is not completed

2. On the facts and in the circumstances of the case Ld CIT(A)(NFAC) Delhi is erred in providing relief to the assessee by allowing the capital expenditure Rs 3,73,59,866/- charged to the profit and loss account which was adjusted to interest income of Rs 3,86,13,232/- from fixed deposit made by the fund obtained from long term borrowing.

3. That the appellant craves leave to add/ or alter, amend, modify or rescind the grounds here in above before or hearing of this appeal.”

3. We shall 1st take up the case for the assessment year 2013-14. Brief facts of the case are that the assessee had filed its return of income for the AY 2013-14 declaring total income of ₹17,88,720/- and the assessment was made under section 143(3) of the Act on 16.02.2016 determining the total income of ₹6,43,70,550/- after making disallowance of business expenditure of ₹37,359,866/- and the addition of ₹38,613,323/- under the head income from other sources. The assessee preferred an appeal before the Ld. CIT(A) who partly allowed the appeal. Aggrieved with the order of the Ld. CIT(A) the revenue has filed the appeal before the Tribunal.

6. None appeared on behalf of the assessee; therefore, the case was heard with the assistance of the Ld. DR. It was submitted by the Ld. DR that in this case that the NCLT has passed an order and the Interim



Resolution Professional has also been appointed. A copy of the letter No. Ward-8(2)/Kol/Sarga Hotel/2024-25/72 dtd 09.07.2024 of the ITO, Ward 8(2), Kolkata along with a copy of the letter dated 16.03.2024 of the assessee has been filed. The relevant extract from the letter of the assessee is as under:

"To,

Date: 16.03.2024

PAN AAICS3034R

The Ld. PCIT-1, Kolkata

Aaykar Bhawan

P-7 Chowringhee Square Kolkata-700069

Sub: Intimation with respect to approval of Resolution Plan under Section 30 and 31 of the Insolvency and Bankruptcy Code, 2016 ("Code") in the matter of Sarga Hotel private Limited CIN U27109WB1995PLC0761141 PAN AAJCS 30348

Respected Sir,

Referring the abovementioned subject, as you must be aware that the Hon'ble National Company Law Tribunal, Kolkata Bench ("NCLT") vide Order dated 11 February 2022, directed for initiation of Corporate Insolvency Resolution Process of Sarga Hotel Private Limited ("Corporate Debtor") under Section 7 of the Code, and appointed Mr. Avishek Gupta as the Interim Resolution Professional ("IRP) in this regard [CP (IB) 302/KB/2021].

The IRP/RP, accordingly, under Section 25(2)(h) of the Code, floated invitation for expression of interest (EOI) for the resolution plan of the Corporate Debtor. Pursuant to the said EOI, Shriram Multicom Private Limited ("Company") being eligible, submitted its Resolution Plan under Section 30 of the Code. The Committee of Creditors of the Corporate Debtor vide its 15th COC meeting held on 30th May, 2023 approved the Resolution Plan submitted by the Company with 100% consent and was declared as the HI Bidder.

Subsequently, the Resolution Plan submitted by the Hi Bidder/Company was placed before the Hon'ble National Company Law Tribunal, Kolkata Bench ("Bench") for the final sanction and approval. Upon perusing the application, the Hon'ble Bench vide Order dated 4th January 2024 approved the Resolution Plan submitted by the Company under Section 31 of the Code (Copy of the Order

dated 4^a January 2024 read with Resolution Plan is enclosed herewith and marked as Annexure A and Annexure B respectively.

Under the terms of the aforementioned Resolution Plan, the admitted claims of the statutory dues of the Corporate Debtor were settled and resolved by payment of an amount of Rs 2,29,329/- (Refer Page 7.8.2 of the Resolution Plan) The said amount includes Rs. 894/- to be paid in favour of ACIT, TDS Circle 3 (1), Kolkata. We intend to make such payment, and as such, we had prepared a Demand Draft in favour of Your Self for CBDDT". Copy of the said Demand Draft is attached herewith and marked as Annexure "In this connection we request you to go through the same and confirm the details mentioned in the said Demand Draft. In case, any modification is required in the name of Demand Draft, then please let us know.

Reference may be made to Para 27 of the Hon'ble NCLT order, wherein it has been clearly mentioned that the requirement to obtain waivers from any tax authorities including in terms of section 79 and section 115JB of the Income Tax Act, 1961 is deemed to have been granted upon the approval of this Resolution Plan on the Transfer Date with effect from Effective Date."

6.1 Since in this case, the petition u/s 7 of IBC, 2016 has been admitted and the CIRP had commenced and moratorium u/s 14 of the IBC, 2016 had been enforced, therefore, the appeal before the Tribunal becomes infructuous. Further, subsequent to the approval of the resolution plan, all proceedings initiated prior to the admission of application of CIRP are discontinued and the statutory dues forming part of the resolution plan only can be enforced. Hence, the appeal of the Revenue becomes infructuous and are liable to be dismissed.

7. In a similar case, the Coordinate Bench of the Tribunal of the ITAT, Kolkata 'C' Bench 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 CIRP 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. Edelweis 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]

{emphasis supplied}

8. Since the provisions of IBC override the provisions of the IT Act, 1961 as is held in the judicial pronouncements cited above that the resolution applicant has to start on a clean slate and all litigations come to a stop, therefore, as is held in the decision of the Coordinate Bench in the case of **Kohinoor Steel (P.) Ltd.** (supra), the appeals of the Revenue or the assessee cannot continue as only the claims which are made part of the resolution plan can be enforced. Hence, both these appeals become infructuous and are hereby dismissed. In the event of the resolution plan not being accepted at any stage or being rejected for any reason, the Revenue shall be at liberty to get the appeals revived before the Tribunal by filing an appropriate application within the limitation permissible.

9. In the result, both the appeals filed by the Revenue are dismissed as infructuous.

Order pronounced in the open Court on 31st December, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 31.12.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **M/s. Sarga Hotel Private Limited, Plot No-X-1.2 and 3, Block EP, Sector-V, Sech Bhawan S.O, Salt Lake, North 24 Pargans., Kolkata, West Bengal, 700091.**
2. **I.T.O, Ward-8(2), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, 5th Floor, Kolkata, West Bengal, 700069**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata