

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– II)
KOLKATA**

I.A. No. 1178/KB/2022

in

C.P. (I.B) 170/KB/2017

*An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

RBL Bank Limited.

..... Financial Creditor

-versus-

MBL Infrastructure Limited

..... Corporate Debtor

And

1. **MBL Infrastructure Limited.**
2. **Anjanee Kumar Lakhotia**

..... Applicants

-versus-

1. **Union of India, through Secretary, Department of Revenue, Ministry of Finance, Govt. of India;**
2. **Deputy Commissioner of Income tax;**
3. **Assessing Officer, Income Tax Department.**

..... Respondent

Date of Pronouncement of the order: 13 March 2024

Coram:

Bidisha Banerjee, Member (Judicial)

Balraj Joshi, Member (Technical)

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court– II)

MBL Infrastructure Ltd. & Anr. V. UoI & Ors.
I.A. No. 1178/KB/2022 in C.P. (I.B) 170/KB/2017

Appearances (via video conferencing/physical):

Mr. Ratnanko Banerji, Sr. Adv.	] For the Applicant in
IA(I.B.C)/1178(KB)2022,	
Mr. Shaunak Mitra, Adv.	] IA(I.B.C)/511(KB)2023 &
IA(I.B.C)/1102(KB)2022	
Mr. Kanishk Kejriwal, Adv.	] For the Respondent in
MA(IBC)/2(KB)2022	
Ms. Neha Somani, Pr. CS.	]
Ms. Ritika Priya, Adv.	] For the Applicant in MA(IBC)/2(KB)2022
Mr. Anjan Chakraborty, Adv.	] For the Respondent No.2
Mr. Raja Satyajit Banerjee, Adv.	]
Ms. Krishnika Chatterjee, Adv.	]

ORDER

Per Balraj Joshi, Member (Technical):

1. This Court convened through hybrid mode.
2. This is an application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **MBL Infrastructure Limited** i.e. the Corporate Debtor and Anjanee Kumar Lakhotia i.e. successful resolution applicant, seeking the following reliefs:
 - a. *Injunction restraining the Respondents from acting in contravention of the Resolution Plan or making any demands or adjustments not contemplated in the Resolution Plan;*
 - b. *Order of injunction restraining the Respondents from demanding payment of dues of income tax, if any, prior to 01.01.2025 and/or from alleging any default in payment by the Applicants prior to expiry of three years from 01.01.2025;*

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- c. *Order of injunction restraining the Respondents from claiming any penal interest, simple interest, compound interest, damages, penalties, or compounding charges for demands pertaining to the period upto the approval of the Resolution Plan and/or for demands raised pursuant to matters which were sub-judice or under dispute at the time of approval of the Resolution Plan;*
- d. *The Respondents be directed to forthwith refund the amounts along with interest due under Section 244A of the Income Tax Act, 1961 to the Applicant No.1 for Assessment Years 2005-06 to 2018-19, as indicated in Annexures H & K hereto, in accordance with the provisions of the Resolution Plan as approved by the Hon'ble Adjudicating Authority on 18.04.2018 and the respondents be restrained from adjusting any refunds due to the Applicants towards demands of income tax made for the period prior to approval of the Resolution Plan;*
- e. *Order of injunction restraining the Respondents from adjusting the refunds due to the Applicant No.1 towards any demand made for a matter which was sub-judice or under dispute at the time of approval of the Resolution Plan, for a period of 7 years after the final judgement is delivered in the sub-judice matters;*
- f. *Order of injunction restraining the Respondents from making any fresh claims or demands for Assessment Years 2005-06 to 2018-19 under the Income Tax Act, 1961;*
- g. *Order be passed to quash and adjudge null and void, the demand notices, penalty notices and show cause notices to the Applicants after the approval of the Resolution Plan as detailed in paragraph no. 19 above;*
- h. *Order of injunction restraining the Respondents from taking any steps or further steps on the basis of the demand notices, penalty*

*notices and show cause notices as detailed in paragraph nos.19, 25
& 26 above;*

- i. Ad-interim orders in terms of prayers above;*
- j. Pass any other or further orders/directions that may be deemed fit
and appropriate in the above facts of the case.*

3. Submissions on behalf of the Applicant:

The submissions of the Applicants are summarized hereinafter:

- 3.1 The Adjudicating Authority admitted the Corporate Debtor/Applicant No.2 into Corporate Insolvency Resolution Process (“CIRP”) vide order dated 30.03.2017. Pursuant to public announcement made on 01.04.2017, the Respondent income tax department filed its claim dated 09.10.2017 before the Resolution Professional (“RP”) for dues amounting to Rs. 23,12,53,145/-. The said claim was admitted by the RP. Thereafter, the Committee of Creditors (“COC”) approved the resolution plan submitted by the Applicant No.2 on 21.12.2017 by 78.50% votes.
- 3.2 The Adjudicating Authority, also approved the said resolution plan vide order dated 18.04.2018. All appeals filed against such order dated 18.04.2018 were dismissed by the Appellate Authorities and as such the resolution plan approved by this Adjudicating Authority attained finality on 18.01.2022. Thereafter, this Adjudicating Authority vide order dated 11.03.2022 passed in I.A.(IBC) 626/KB/2021, directed that the period from 18.04.2018 till 18.01.2022 shall be formally excluded from calculation of the period for implementation of the resolution plan and the dates mentioned in the Resolution Plan would consequentially be extended for the implementation of the Resolution Plan.
- 3.3 The Resolution Plan approved by the Adjudicating Authority provides that the payments of statutory liabilities such as income tax are to be made over a period of three (3) years, commencing from 01.04.2021. The said date was further extended to 01.01.2025 in light of the aforementioned order dated 11.03.2022. As

such, there is no amount payable by the Applicant No.1 prior to the end of the deferment period allowed under the Resolution Plan i.e. 01.01.2025.

- 3.4 Further, the Resolution Plan provides that payments in respect of liabilities against Applicant No.1 arising out of matters which are sub-judice or under dispute at the time of approval of Resolution Plan, without any interest or penalty, are to be made over a period of 7 years after the final delivered in the sub-judice matter. As per Resolution Plan "All the amounts will be paid after proper reconciliation and without prejudice to the legal remedies available to the corporate debtor."
- 3.5 As per section 31(1) of the Code, since the resolution plan as sanctioned by this Hon'ble Adjudicating Authority stands approved upto the Hon'ble Supreme Court, the same has attained finality and is binding on the corporate debtor, 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. Accordingly, all dues of the creditors forming part of the Approved Resolution Plan shall be payable in terms of the approved Resolution Plan and any amount not forming part of the approved Resolution Plan stands ipso facto extinguished without any recourse.
- 3.6 The claims of the Respondent Income Tax Department stand frozen as per Claim Form filed by the Income Tax Department in Form-B dated 09.10.2017 subject to the terms of the approved Resolution Plan. Any claim of the Income Tax Department upto the date of the approval of the Resolution Plan which have not been submitted in the Claim Form dated 09.10.2017 shall stand extinguished.
- 3.7 However, in contravention of the approved resolution plan, the Respondents have been issuing demand notices, penalty notices and show cause notices¹ to the Applicant No. 1 under section 221(1) of the Income tax Act, 1961, thereby

¹Annexure F (Colly)

resulting in harassment of the Applicants. In response to the same, the Applicant No. 1 submitted replies² to the Respondents inter alia placing on record that as per the approved resolution plan, time period of 3 years for payment of statutory dues, if any, with waiver of interest, penalties etc. and a time period of 7 years for any liability (without any interest, penalty etc.) arising out of matters which are sub-judice, has been allowed for all matters upto the approval of the Resolution Plan.

- 3.8 However, in violation of the provisions of the resolution plan, the Respondents instead of refunding the amounts due to the Applicant No.1 under the Income Tax Act, 1961, have adjusted the amount of Rs. 6,61,71,168/- against demands made in previous assessment years. The dues, if any, are payable as per the provisions of the approved Resolution Plan and therefore no adjustment in the aforesaid manner can be made towards such dues. Such purported adjustments are de hors and ex-facie in violation of the provisions of IBC and the terms of the approved Resolution Plan, since all dues for the period prior to the date of approval of the Resolution Plan stand extinguished by operation of law.
- 3.9 The deferment on payment of statutory dues payable under the Plan has been approved in order to allow for the revival of the Applicant No.1 by allowing utilization of the funds available with Applicant No.1 in areas of immediate and critical need, without which the activities of the Applicant No.1 company would come to a standstill. Therefore, it is of utmost importance that the amounts that are due to the Applicant No.1 Company under the Income Tax Act, 1961 be refunded to it on an urgent basis and not be adjusted against outstanding demands, which are under dispute.
- 3.10 In further violation of the provisions of the approved resolution plan, the Respondent authority has been charging interest under Sections 234A, 234B and 234C of the Income Tax Act, 1961 towards alleged demand raised against the Applicant No.1 for A the period prior to 31.03.2017. Out of the total claims

²Annexure G (Colly)

admitted (subject to rights & remedies available to the Corporate Debtor) for Rs 23,12,53,140/- qua the Respondents include interest amount of Rs 10,94,49,478/- which stands waived in terms of the approved Resolution Plan. The balance amount of Rs 12,18,03,662/- is in respect of tax for Assessment year 2014-15 against which appeal filed by the Corporate Debtor is pending before CIT (A) and there is a bright chance of the Corporate Debtor succeeding in the appeal. In case, the appeal is finally decided against the Corporate Debtor, the said amount is payable after seven years after the final judgement as per the approved Resolution Plan. The Respondents have purported to wrongfully levy interest citing various provisions of the Income Tax Act, 1961 to the extent of Rs 18,67,60,785/- after the approval of the Resolution Plan and such demands are not payable in terms of approved Resolution Plan.

- 3.11 It is also now well settled law that by virtue of Section 238 of IBC, the provisions of IBC would have overriding effect over all other laws in force including taxation laws and the Income Tax Act.
- 3.12 The Respondents have also purported to levy interest for Rs 15,39,42,846/- against the assessment years prior to CIRP period for claims were not even filed by the Respondents before the approval of the Resolution Plan and therefore in terms of the approved Resolution Plan it is also not payable.
- 3.13 In accordance with Section 156A of the Income Tax Act, 1961 (as introduced by Finance Act, 2022), the Assessing Officer of the Income Tax Department, after the approval of a resolution plan of a company, is required to modify the demand payable by the Company in conformity with the order of the Hon'ble Adjudicating Authority and to issue a fresh demand notice. However, despite the Section being introduced on 01.04.2022, no such revised demand in compliance with the approval order dated 18.04.2018 has been issued by the Assessing Officer till date.

3.14 The Applicant No.1 filed written representations³ outlining its grievances with the Respondents giving details of the refunds due to the Applicant No.1 for different Assessment Years in accordance with the provisions of the Income Tax Act, 1961. However, till date no response has been received by the Applicants.

4. Submissions on behalf of the Respondent:

4.1 The claim aroused on or after the approval of the resolution plan i.e. 18.04.2018 shall be paid by the applicant company, as an ongoing concern, as per resolution plan. Further, under the appeals wherein the verdict has come on or after 18.04.2018 shall also be payable by the applicant itself. It is therefore, misconceived that all the claims accrued as on date are frozen.

4.2 The applicant has never raised before any appellate authority of the Income Tax that the applicant company is under CIRP.

4.3 It is also misconceived that the other claims stand extinguished after submission of Form 'B', since most of the claims/liabilities are under appeal preferred by the applicant itself and therefore it may not come in the Form 'B'.

4.4 The respondent Authority is unaware about the Order dated 11.03.2022 as passed in IA 626 of 2021. The respondent came to know about the said Order from the annexure of this application, and therefore appropriate action will be initiated in due course of time in accordance with law.

4.5 The resolution plan does not extinguish the Applicant No. 1's liability to pay the statutory dues of the Income Tax Department, it merely allows the Applicant No.1 to pay the statutory dues in next 3 years. Further, the liability arising out of the sub-judice matters are resolved to be paid over within a period of 7 years after the judgement.

4.6 The Notices issued by the Department post approval of resolution plan are show-cause in nature and the applicant may avail all the opportunity of filing a reply and or personal hearing under the provision of Income Tax Act. 1961, and the

³Annexure J (Colly)

IBC 2016 do not curtail that right as available under the said Income Tax Act, and therefore the said notices are good in law.

- 4.7 Under sections 2(24) and 2(43) of the Income Tax Act 1961, "tax" means Income Tax chargeable under the provision of this Act, and in relation to any other assessment year Income Tax and Super Tax chargeable under the provision of this Act including fringe benefits. Therefore, the assessment of any year and the subsequent proceedings as initiated under the Income Tax Act are not separate and should be read together. Hence, the Applicant No.1 is misconceived by the understanding that dues being payable for now cannot be adjusted.
- 4.8 The interest as accrued from Section 234A, 234B, 234C is rightly applicable since the resolution plan clearly states that 'statutory dues' (including Income Tax) are payable at page 45 of the resolution plan and hence the submission of the applicant is denied as not tenable under the law.
- 4.9 The Assessing Officer has already processed all Orders⁴ as passed by the Ld. ITAT and has given effect thereof. A refund of Rs. 30,32,59,346 has been sent to Central Processing Center (CPC) for processing on various dates, and which are under process.
- 4.10 The cases initiated before and after 18.04.2018 in which the dues of the corporate debtor amounting to Rs. 15,96,23,710 + Rs. 68,61,13,600 = Rs. 84,57,37,310/- are under challenge before the Ld. CIT(A) are supposed to given effect on and after the outcome of the appeal and or in accordance with the Income Tax Act.
- 4.11 the present assessing officer has passed order U/s. 156(A) on date 24.02.2023 by modifying the claim amount of Rs. 2,28,45,024/- as passed U/s. 254 vide order dated 20.12.2023 for the AY 2009-10 to Zero U/s. 156A of the Income Tax Act. Copy of the order is enclosed in Annexure-R2. Therefore, the submission as made under Para 27 by the applicant is misconceived.

5. *Rejoinder filed on behalf of the Applicants:*

⁴ Annexures R-1 and R-2 to the reply

- 5.1 The Respondents have acted contrary to the Resolution Plan by denying waiver of interest and penal interest portion of the claims filed by the Income Tax Department, on the baseless pretext that interest under Sections 234A, 234B, 234C etc. of the Income Tax Act are statutory dues and not interest.
- 5.2 From the claim form dated 09.10.2017 filed by the Respondent Department during CIRP in Form B (pg 135-137 of the said Application) it shall appear that the Respondent Department had only lodged claims for Assessment Years 2005-06, 2011-12, 2012-13, 2013-14 and 2014-15. Claims in respect of assessment years, not submitted in the CIRP, stood automatically extinguished by operation of law upon approval of the Resolution Plan and did not form part of the approved Resolution Plan. The Respondents have baselessly and contrary to settled law, alleged that pre-CIRP claims even submitted during CIRP, are not extinguished.
- 5.3 Even though the Respondents have alleged in the Reply that Section 156A of the Income Tax Act has been complied with, the only order disclosed by the Respondent in terms of section 156A of the Income Tax Act is dated 24.02.2023 (pages 22-24 of Reply) for the assessment year 2009-10. From the orders of the Department under Sections 254, 251, 143(3) and 153A of the Income Tax Act, 1961, inter alia, produced at pages 28 and 31 of the said Reply for A.Y. 2011-12 and A.Y. 2012-13 respectively, it is evident that proper effect of Section 156A of the Income Tax Act has not been given effect to by the Respondents.
- 5.4 Regarding the Claim Form-B, it is stated that claims⁵ therein included interest charged by the Respondent Department on Income Tax assessed against the Applicant No.1 Company. It is reiterated that under the Resolution Plan, penal interest, simple interest or compound interest would not be payable by the Applicants. Therefore, the amount payable to the Respondent Department under the Resolution Plan was only Rs 3,37,58,161 for A.Y. 2013-14 and Rs. 12,18,03,662 towards Income Tax for the A.Y. 2014-15. All other claims thus stood extinguished.

⁵Annexure- 1 to the rejoinder

5.5 From the Reply, it appears that in the assessment order dated 27.06.2023 (page 28-29 of Reply) the Respondent Department has sought to wrongfully claim interest of Rs. 2,72,95,928/- from the Applicant No.1 for A.Y. 2011-12 and adjusted the balance refund, inter alia, against the tax demand for A.Y. 2016-17 and A.Y. 2017-18 which were not even part of the Resolution Plan and stood extinguished without recourse upon approval of the Plan. Further, from the Order dated 27.06.2023 (page 31-32 of Reply) dealing A.Y. 2012-13, it appears that interest of Rs. 3.43,56,796 has been wrongfully charged by the Respondent Department on the assessed tax.

5.6 Therefore, from a perusal of the orders passed by the Respondent Department (pages 28-29 and 31-32 of Reply), it is evident that the approved Resolution Plan has not been given effect to by the Respondents as required under Section 156A of the Income Tax Act.

5.7 Further, additional demands have been made by the Respondent Department for the period up to 31.03.2017 for which no claim was filed in the CIRP and which therefore stood extinguished without recourse and did not form part of the approved Resolution Plan.

5.8 It is submitted that the following directions should also be given by this Adjudicating Authority for implementation of the Resolution Plan:

- (a) To not make any claims in respect of any assessment years except for the years submitted to the Resolution Professional and within the scope of the Resolution Plan;
- (b) To not levy any interest or any penal interest under Section 234A, 234B, 234C or any other provisions of the Income Tax Act;
- (c) To not make any claim in contravention of the time period as extended by the order dated 11.03.2022 as also affirmed by the order of the Hon'ble National Company Law Appellate Tribunal (NCLAT) dated 23.05.2023. A copy of the order dated 23.05.2023 passed by the Hon'ble NCLAT and order dated 11.03.2022 passed by this Hon'ble

Tribunal is enclosed and marked as "Annexure-3" & "Annexure-4" respectively;

(d) To apply Section 156A of the Income Tax Act to all pre-CIRP period i.e prior to 31.03.2017 and give effect to the approved Resolution Plan.

6. Analysis and Findings:

6.1 Heard the Ld. Counsels on behalf of the parties and perused the records.

6.2 Upon perusal of the pleadings before us, we find that the following issues require adjudication:

- i) Which dues of the Respondents would need to be paid and which dues would stand extinguished;
- ii) Whether interest can be levied on the tax demands under sections 234A, 234B, 234C and 220 of the Income Tax Act;
- iii) When would the payment be required to be made by the Successful resolution Applicant;
- iv) Whether the SRA can claim refund of the income tax, and to what extent?

Issue I: Regarding the admission/ extinguishment of claims

6.3 Once a company is admitted into CIRP and Public Announcement regarding the same has been made, all claims by creditors thereafter are required to be made as per the provisions of the CIRP Regulations.

6.4 Further, by virtue of the moratorium issued under section 14 of the Code, any claim against the corporate debtor which is pending adjudication or has not been crystallised as of the insolvency commencement date i.e. contingent claim, cannot be adjudicated after the initiation of the Corporate Insolvency Resolution Process ('CIRP').

6.5 Since the Respondents in the instant matter are governmental authorities, they would fall within the category of Operational Creditor and hence are required to submit their claims to the RP in Form B as per the extant law. All debts due from the Corporate Debtor to the Respondent Authorities would have to be submitted to the RP who would then prepare the list of stake-holders and information

memorandum and pass the same on to the prospective resolution applicants. It is on the basis of such information memorandum, that the PRA assesses the total debts of the Corporate Debtor and prepares the resolution plan which is then presented to the Committee of Creditors (“CoC”). Once the resolution plan is approved by the Adjudicating Authority and has attained finality, the Corporate Debtor, now in the hand of the new management, is given a clean slate. The revived Corporate Debtor is no longer liable for any Pre- CIRP liabilities that ought to have been claimed before the approval of the Resolution Plan.

6.6 In this regard we would like to rely upon the decision of Hon’ble Supreme Court of India in the matter of **Essar Steel India vs. Satish Kumar Gupta &Ors** wherein it has been held as follows:

*“67. 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.”*

6.7 We would further like to rely on the decision of the Hon’ble Supreme Court in the matter **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**⁶ wherein the Apex Court has laid down the law in regard to the

⁶2021 SCC OnLine SC 313 decided on 13.04.2021.

extinguishment of past liabilities of the Corporate Debtor once the resolution plan is approved. According to the Hon'ble Supreme Court, once a resolution plan has been duly approved by the Adjudicating Authority pursuant to section 31(1), the claims specified in the resolution plan shall stand frozen and be binding upon the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government, or any local authority, guarantors, and other stakeholders. All such claims that are not included in the resolution plan must be extinguished as of the day the Adjudicating Authority approves the resolution plan, and no individual shall have the right to begin or continue any proceedings with respect to a claim that is not included in the resolution plan. The Hon'ble Supreme Court has further ruled that, if not covered by the resolution plan, all debts to the Central Government, any State Government, or any local authority shall stand extinguished and that no further legal action may be taken to collect those debts for the time period prior to the date the Adjudicating Authority grants its approval under Section 31. The relevant part of the **Ghanshyam Mishra judgment(supra)** in this regard is given below:

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (*supra*).

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLineNCLAT 388] 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 would 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, NCLAT judgment must also be set aside on this count.” “

6.8 We also place reliance on the recent judgement of Hon’ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan**⁷ 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

⁷ D.B. Civil Writ Petition No. 6048/2020, decided on

creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

- 6.9 It is therefore clear that as on the date of approval of the resolution plan by the Adjudicating Authority, any claim other than the ones admitted by the RP, belonging to the Pre- CIRP period, including uncrystallized claims, shall stand extinguished. The revived Corporate Debtor will no longer be liable to make payments of any past dues belonging to the Pre- CIRP period.
- 6.10 Upon perusal of the records, it is seen that the Corporate Insolvency Resolution Process in respect of the Corporate Debtor commenced on and from 30.03.2017. The respondents submitted their claim in Form B to the RP on 09.10.2017. Therein, dues for the Assessment Years 2005-06, 2011-12, 2012-13, 2013-14 and 2014-15 were claimed. The said claim was admitted by the RP and resolution plan approved by the Adjudicating Authority contains stipulations for the payment of such claim.
- 6.11 In light of the aforementioned case-laws, it is clear that the claim made by the Respondent Authority shall stand frozen upon the approval of the resolution plan vide order dated 18.04.2018 and shall be payable by the SRA. Any other claim of the Respondent Authorities belonging to a period before 30.03.2017, that was not included in the Form B and not finding a place in the Resolution Plan would stand extinguished as on 18.04.2018.

Issue 2: on levying of interest on the income tax liabilities as per sections 234A, 234B, 234C and 220 of the Income Tax Act

- 6.12 The resolution Plan was approved by the Adjudicating Authority on 18.04.2018. The two main reliefs/concessions with regard to the income tax dues, as envisaged in the resolution plan are as under:

- i. *“The payment of statutory liabilities (like income tax, service tax, Vat, Royalties, Cess, Stamp Duty, other statutory dues etc.) are proposed to be made over a period of 3 years from 1st April, 2021 with waiver of penal Interest, simple interest, compound interest, damages, penalties, compounding charges etc. on all statutory dues*

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such as PF, ESI, TDS, Road Taxes (National and State), Income Tax, Service Tax, VAT etc." (page 62 of the application);

- ii. *"liability arising out of the matter, which is presently sub-judice/under dispute/contingent leads to liability against the corporate debtor is proposed to be paid over a period of 7 years after the judgement without any interest and penalty, subject to rights and remedies to the corporate debtor" (page 63 of the application).*

6.1 In the Form B submitted by the respondent authorities to the RP on 09.10.2017, dues for the Assessment Years 2005-06, 2011-12, 2012-13, 2013-14 and 2014-15 were claimed. Therein, a total claim was for a sum of Rs. 23,12,43,145/- and the said amount consisted of the demand raised for each year along with the interest under section 220(2) of the Income tax Act, 1961 and penalty under sections 271B and 271F of the Income tax Act, 1961, calculated up to the CIRP commencement date. The said claim was admitted by the RP. Accordingly, the Resolution Plan was prepared on the basis of such admitted claim.

6.2 As such, the payment in respect of the income tax liabilities of the Corporate Debtor for the pre-CIRP period will only be payable to the extent that is admitted by the RP and subsequently proposed to be paid by the Successful Resolution Applicant in the resolution plan. It is noted that the phrase "*waiver of penal Interest, simple interest, compound interest, damages, penalties, compounding charges etc. on all statutory dues*" means that no additional interest shall be levied on the said payable amount till the amount is paid in full.

6.3 This explanation in no way suggests that the interest component of the claim admitted by the RP will have to be waived off. The liability to pay the income tax claim to such extent as mentioned in the Form B including the accrued interest was already known to the SRA and the same cannot be treated as a new or unknown due. If any interest component claimed in the Form B has been admitted by the RP and has been factored into the information memorandum, the same will not be considered waived off and thus, shall be payable by the SRA.

Issue 3: When will the income tax liabilities be payable

6.4 According to the Resolution Plan, the payment of statutory liabilities including income tax would only arise from 01.04.2021. Further, in terms of this Adjudicating Authority's order dated 11.03.2022 passed in I.A.(IBC) 626/KB/2021, the period from 18.04.2018 to 18/01/2022 was directed to be excluded for calculation of the period for implementation of the resolution plan. The said order dated 11.03.2022 was upheld by the Hon'ble NCLAT in its order dated 23.05.2023. In light of the same, the payment of such income tax liabilities will only be due from 01.01.2025. No payment in this regard needs to be made at the current stage.

6.5 Further, we also find it relevant to refer to the recent decision of Hon'ble High Court at Keralain the matter of ***Deputy Commissioner (Works Contract), Kerala State Goods And Services Tax Department vs. National Company Law Tribunal Kochi and Anr.***⁸ *Wherein the Hon'ble High Court has observed as follows:*

“5. The Supreme Court, in the case of S V Kandoakar v. V M Deshpande⁹ held that the authorities can only take steps to determine the tax, interest, fines or any such penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. The Supreme Court in Sundaresh Bhatt (supra) agreed with the said ratio laid down in V M Deshpande (supra) and held that the authority could only initiate assessment or reassessment of the duties or other levies. However, they cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 and 33(5) of the IBC. The Interim Resolution Professional or the Liquidator, as the case may be, is empowered to question the legality of the assessment order before the deputed authority.”

⁸WP(C) NO. 39185 OF 2022, decided on 30.01.2024

⁹(1972) 1 SCC 438

6.6 It is clear from the aforesaid decision that while the Respondent Authority had every right to pass assessment orders for the dues of the Corporate Debtor, the recovery of the same during the moratorium period would be prohibited. Further, in the instant case, the liability to pay the amount mentioned in the resolution plan only arises on or after 01.01.2025.

6.7 Further, it is seen that the resolution plan mentions that contingent liabilities shall be payable over a period of 7 years from the date of the final order in such dispute.

6.8 It is clear to us that once the moratorium under section 14 of the Code kicks in, the institution of new legal proceedings or continuation of pending legal proceedings against the Corporate Debtor becomes prohibited. Execution of any judgment, decree or order is also stayed. The moratorium continues till the completion of the CIRP. CIRP ideally culminates into an approved resolution plan. It is on approval of such resolution plan, the Corporate Debtor is given a ‘clean slate’, meaning the past liabilities of the Corporate Debtor that is not included in the resolution plan are extinguished with effect from the date of such approval. However, where the resolution plan itself provides for the payment of contingent liabilities, such claims upon crystallization, ought to be repaid.

6.9 In this regard, we would like to refer to the decision of Hon'ble Supreme Court in the matter of ***Fourth Dimension Solutions Ltd. v. Ricoh India Ltd. & Others***¹⁰ ***the Apex Court has held as follows:***

“It is indisputable that the Resolution Plan approved by the Committee of Creditors has been finally upheld by this Court vide judgment dated 10.03.2021 in Civil Appeal Nos. 2943-2944 of 2020 titled as "Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd. & Anr." and connected cases, reported in 2021 (10) SCC 401.

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¹⁰ (2022) ibclaw.in 06 SC, decided on 21.01.2022

It is stated that some arbitration proceedings were pending between the parties. If so, all contentions available to both sides be decided in the said proceedings on its own merits in accordance with law.”

- 6.10 In Fourth Dimension (supra), the Apex Court has allowed for adjudication of arbitration proceedings which were sub-judice during the course of CIRP of the Corporate Debtor therein. Drawing parallels with the instant matter, it is seen that in the Form B submitted by the respondent Authorities, the details of the pending appeals before the Hon’ble ITAT were mentioned. It clearly suggests that the appeals filed in respect of the assessment orders for the A.Y. 2013, 2013-14 and 2014-15 were admitted as contingent claims by the RP as per Regulation 14 of the CIRP Regulations 2016 and were also known to the SRA. It is evident that the SRA would anticipate such liabilities and accordingly factors in such payments while preparing the resolution plan.
- 6.11 The “hydra head” referred to in the Essar steel vs. Satish Gupta explains the “surprise element” in preparation of a resolution plan, as a Resolution applicant is not supposed to provide for the claims which pop up after the plan, but in the instant case the Resolution applicant was aware that such a claim emanating from the appeal would also require to be satisfied. As such, the said claim cannot be held to be extinguished upon the approval of the Resolution plan and needs to be satisfied in accordance with the stipulations of the Resolution Plan.

Issue 4: Whether the SRA can claim refund of the income tax, and to what extent

- 6.12 The Applicants have further claimed that the amount of Rs. 6,61,71,168/- is due and refundable to the Applicant No. 1 but has been illegally adjusted by the Respondents towards demands raised for Assessment Years prior to the approval of the Resolution Plan. In this regard, we have perused Annexure – R2 of the Reply Affidavit filed by the Respondent Authorities, containing the Orders under section 254/251/153A/143(3) of the Income Tax Act, 1961. Upon perusal of said orders, it can be seen that the refund amounts for various years including A.Y. 2005-06, 2007-08, 2008-09, and 2010-11 have been adjusted against dues of other assessment years belonging to a period prior to the approval of the resolution plan

by the Adjudicating Authority. Such dues, since extinguished in light of the approval of the resolution plan are no longer payable and any adjustment in favour thereof is not sound in the eyes of law. By allowing such adjustments, the SRA is being made to pay for the past liabilities of the Corporate Debtor. As such, it is pertinent that the amounts that are due to be refunded to the SRA be refunded fully.

6.13 Coupled with the fact that the recovery of any dues other than the ones claimed in Form B, belonging to the pre-CIRP period and the CIRP period would be barred in light of the approval of the resolution plan, it becomes clear that the adjustment of the amounts refundable to the Applicant No.1 against such dues is bad in law and not permissible. As such, any amount adjusted after 18.04.2018, against the tax dues belonging to any assessment year prior to 18.04.2018 shall not hold and needs to be refunded to the Applicant in full.

6.14 In light of the aforesaid findings therefore, we pass the following directions:

- (a) The income tax dues of the Applicant No.1 with respect to the amounts payable under the resolution plan shall be due on and from 01.01.2025;
- (b) No penal interest, simple interest, compound interest, damages, penalties, or compounding charges for demands pertaining to the period upto the approval of the Resolution Plan shall be levied upon the amount payable under the Resolution Plan;
- (c) The Respondents shall refund the amounts along with interest due under Section 244A of the Income Tax Act, 1961 to the Applicant No.1 for Assessment Years 2005-06 to 2018-19, in accordance with the provisions of the Resolution Plan as approved by the Hon'ble Adjudicating Authority on 18.04.2018 and the respondents shall not adjust any refunds due to the Applicants towards demands of income tax made for the period prior to approval of the Resolution Plan;
- (d) The Respondents shall not make any demands or adjustments not contemplated in the Resolution Plan;
- (e) The Respondents shall not any fresh claims or demands for Assessment Years 2005-06 to 2018-19 under the Income Tax Act, 1961.

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court– II)

MBL Infrastructure Ltd. & Anr. V. UoI & Ors.
I.A. No. 1178/KB/2022 in C.P. (I.B) 170/KB/2017

6.15 With the aforesaid directions, **I.A.(IBC) 1178/KB/2022** is *disposed of*.

6.16 Certified copy of this order may be had from the registry of this Adjudicating Authority subject to fulfilling of the codal formalities.

(Balraj Joshi)
Member (Technical)

Bidisha Banerjee)
Member (Judicial)

Order signed on this, the day of 13th day of March, 2024

SM_LRA