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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 26<sup>TH</sup> DAY OF MAY 2025 / 5TH JYAISHTA, 1947

WP(C) NO. 32546 OF 2024

PETITIONER/S:

M/S. HEERA CONSTRUCTION COMPANY PVT. LTD.,  
HEERA PARK, M.P. APPAN ROAD, VAZHUTHACAUD,  
TRIVANDRUM, REPRESENTED BY ITS MANAGING DIRECTOR,  
PIN - 695014

BY ADVS.  
AKHIL SURESH  
KALLIYANI KRISHNA B.

RESPONDENT/S:

- 1 UNION OF INDIA, REPRESENTED BY  
THE PRINCIPAL SECRETARY,  
MINISTRY OF FINANCE, MAIN BLOCK,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM,  
PIN - 695001
- 2 PRINCIPAL COMMISSIONER,  
OFFICE OF THE PRINCIPAL COMMISSIONER,  
CENTRAL TAX AND CENTRAL EXCISE,  
P.B. NO. 13, GST BHAVAN,  
PRESS CLUB ROAD THIRUVANANTHAPURAM,  
PIN - 695001
- 3 COMMISSIONER,  
OFFICE OF THE CENTRAL GST AND CENTRAL EXCISE,  
P.B. NO. 13, GST BHAVAN,  
PRESS CLUB ROAD,  
THIRUVANANTHAPURAM,  
PIN - 695001

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BY ADVS.  
C.DINESH  
V.GIRISHKUMAR, SC, CENTRAL BOARD OF INDIRECT TAXES  
AND CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 26.05.2025, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

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## **JUDGMENT**

The petitioner, which is a company registered under the Companies Act, 1956 and is being subjected to the Corporate Insolvency Resolution Process, as per Ext.P1 order, has approached this Court, challenging Ext.P4 show cause notice issued by the 3<sup>rd</sup> respondent and Ext.P7 Order-in-Original passed pursuant to Ext.P4. The Exts.P4 and P7 pertain to the service tax allegedly payable by the company for the financial years 2014-2015, 2015-2016 and 2016-2017. The specific challenge raised in this writ petition against the aforesaid notices/orders at the instance of the petitioner is that the same cannot be sustained, in view of the statutory prohibition contemplated under Section 31 read with Section 32A of the Insolvency and Bankruptcy Code, 2016. The facts which led to the filing of this writ petition are in brief as follows:

2. As against the company, the proceedings in relation to Corporate Insolvency Resolution Process have commenced as per Ext.P1, as per the order passed by the National Company

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Law Tribunal (NCLT), dated 27.03.2019. Thereafter, in the 9<sup>th</sup> meeting of the Committee of Creditors held on 14.06.2022, a resolution plan was approved. Thereafter as per Ext.P3 order passed by the NCLT, the said resolution plan was approved on 31.03.2023.

3. In the meanwhile, Ext.P4 notice was issued by the 3<sup>rd</sup> respondent on 10.10.2019, which was served upon the erstwhile management of the petitioner company. However, further proceedings based on Ext.P4 were not pursued, and later Ext.P5 was issued to the petitioner as part of the adjudication proceedings based on Ext.P4. As against Ext.P5, the petitioner submitted Ext.P6 reply wherein, the pendency of the proceedings under the Insolvency and Bankruptcy Code were highlighted and also the statutory prohibitions as contemplated under the Act. However, now, Ext.P7 Order-in Original has been passed adjudicating the claims under Ext.P4 by the 3<sup>rd</sup> respondent herein. This writ petition is submitted by the petitioner challenging the same.

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4. Heard Sri.Akhil Suresh, the learned counsel for the petitioner and Sri. Gireesh Kumar V, the learned Standing Counsel for the respondents.

5. The only question that arises for consideration is as to whether the proceedings based on Ext.P7 are legally sustainable in view of the Corporate Insolvency Resolution Process now pending consideration before the NCLT. The learned counsel for the petitioner placed reliance upon the decision rendered by the Honourable Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Ors.** [2021 (3) SCJ 647]. On going through the decision rendered by the Honourable Supreme Court in **Ghanshyam Mishra's** case (supra), it can be seen that the Honourable Supreme Court, after examining various provisions and schemes of the Insolvency and Bankruptcy Code 2016, held that, once a resolution plan is duly approved by the adjudicating authority under Sub-Section (1) of Section 31, the claims as provided in

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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. It was further observed that, on the date of approval of the resolution plan by the adjudicating authority all such claims which are not part of the 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.

6. Thus, the position of law is very clear. As far as this case is concerned, the resolution plan was approved by the NCLT as early as on 31.03.2023. Even though Ext.P4 notice was issued by the 3<sup>rd</sup> respondent on 10.10.2019, the further proceedings were not pursued on the basis of the same, and the order which is impugned in this case was passed only on 19.07.2024. By the time, the resolution plan was already approved i.e. on 31.03.2023 and therefore the statutory prohibition as observed by the Honourable Supreme Court in

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**Ghanshyam Mishra's** case (supra) came into existence. Therefore, by virtue of the same, the Exts.P4 and P7 order and the proceedings pursuant thereto, cannot be treated as legally sustainable as it stood extinguished from the date on which the resolution plan was approved by the NCLT.

In such circumstances, this writ petition is disposed of, quashing Ext.P4 and P7, in the light of the above.

Sd/-

**ZIYAD RAHMAN A.A.**  
**JUDGE**

rpk

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**APPENDIX OF WP(C) 32546/2024**

**PETITIONER EXHIBITS**

- |                   |  |
|-------------------|--|
| <b>Exhibit P1</b> | <b>A TRUE COPY OF THE ORDER OF THE<br/>NATIONAL COMPANY LAW TRIBUNAL IN<br/>CP(IB)/4447/MB/2018 DATED 27.03.2019</b>                         |
| <b>Exhibit P2</b> | <b>A TRUE COPY OF THE RESOLUTION PLAN<br/>WHICH WAS APPROVED BY THE NATIONAL<br/>COMPANY LAW TRIBUNAL, MUMBAI BENCH<br/>DATED 14.06.2022</b> |
| <b>Exhibit P3</b> | <b>A TRUE COPY OF THE ORDER DATED<br/>31.03.2023 IN INTERLOCUTORY APPLICATION<br/>NO. 1841 OF 2022 APPROVING THE<br/>RESOLUTION PLAN</b>     |
| <b>Exhibit P4</b> | <b>A TRUE COPY OF THE SHOW CAUSE NOTICE<br/>NO. 08/2019-20/ST (COMMR.) DATED<br/>10.10.2019</b>  |
| <b>Exhibit P5</b> | <b>TRUE COPY OF THE NOTICE C.NO.<br/>IV/16/27/2017-ST ADJ DATED 13.05.2024</b>   |
| <b>Exhibit P6</b> | <b>TRUE COPY OF THE REPLY OF THE<br/>PETITIONER DATED 21.05.2024</b>   |
| <b>Exhibit P7</b> | <b>A TRUE COPY OF ORDER-IN-ORIGINAL NO.<br/>TVM-EXCUS-000-COM-1-24-25 DATED<br/>19.07.2024</b>   |