

Court No. - 3

Case :- WRIT TAX No. - 225 of 2023

Petitioner :- M/S Tehri Iron And Steel Casting Limited And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anshul Kumar Singhal, Rahul Agarwal, Vinay Sharma

Counsel for Respondent :- CSC

Hon'ble Shekhar B. Saraf, J.

Hon'ble Praveen Kumar Giri, J.

1. Heard Sri Vinay Sharma with Sri Vedant Agarwal, learned counsel appearing on behalf of the petitioners and Sri Nimai Das, learned Additional Chief Standing Counsel appearing on behalf of the State.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioners have sought for the following substantial reliefs:

"(i) Issue a writ order or direction in the nature of Certiorari calling for the record and to quash the Impugned Orders dated 15.12.2022 passed under section 28(2) (ii) of the U.P. VAT Act 2008, under section 9(4) of The U.P. Tax on Entry of Goods Act 2007 and the order under section 12(3) of The U.P. Tax on Entry of Goods Act 2007. (Annexure No. 1, 2 & 3 to this writ petition).

(ii) Issue a writ order or direction in the nature of Certiorari to quash the Impugned demand notices dated 08.02.2023 issued by the respondent No. 3 (Annexure No. 4 to this writ petition).

(iii) Issue a writ order or direction in the nature of Mandamus commanding the respondents not to take any coercive steps against the Petitioners pursuant to the Impugned orders dated 15.12.2022 and the Impugned Notices dated 08.02.2023 and not to issue any further demand in connection with the Assessment Year 2012-13."

3. The case of the petitioner is that the petitioner went into a Corporate Insolvency Resolution Process (hereinafter referred to as CIRP), on May 31, 2018. A Resolution Professional was appointed on the same day and thereafter proceedings continued before the National Company Law Tribunal (in brevity NCLT). As per the procedure, the creditors were asked to submit their claims before the Resolution Professional. Specific notice was also sent to

Commercial Tax Department, U.P. by the Resolution Professional of the petitioner. The impugned orders, with regard to the Assessment Year 2012-13 was passed on December 15, 2022 and February 8, 2023. On May 21, 2019, the Resolution Plan was approved by the NCLT.

4. Learned counsel appearing on behalf of the petitioners, to buttress his argument that once the Resolution Plan has been approved by the NCLT, the Commercial Tax Department cannot create further dues by way of passing orders, has relied upon the following judgments, viz. (i) Ghanshyam Mishra and Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd., reported in [SC] [2021] 126 Taxmann.com 132/166 SCL 237 (SC), (ii) N.S. Papers Ltd. Vs. Union of India and Others [Writ Tax No. 408 of 2021, decided on December 11, 2024], (iii) Vaibhav Goyal & Another Vs. Deputy Commissioner of Income Tax & Another [Civil Appeal No. 49 of 2022, decided on March 20, 2025] (SC) and (iv) Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satish Kumar Gupta & Others [2019] 16 S.C.R. 275].

5. This Court, in Writ Tax No. 408 of 2021 [M/S NS Papers Limited And Another Vs. Union of India Through Secretary and Others], after dealing with a catena of judgments rendered by the Supreme Court and also other High Courts held as follows:

"11. He further submits that if proceedings under the Act could be initiated, continued with and culminated during the course of CIRP and institution of Moratorium u/s 14 of the Code, the following may also kindly be considered, for these have a bearing on the fact that income tax proceedings should not get shadowed or extinguished merely by the institution of CRIP and passage of a moratorium order, unless the proceedings were clearly inconsistent with or repugnant to any provisions of the Code, which is not the case here.

12. Upon considering the facts and circumstances of the case, we are of the view that the arguments raised by the learned counsel appearing on behalf of the respondents is without any merit on two counts. Firstly, it is clear by the letter dated March 8, 2021 that the petitioner had informed the Income Tax Authorities with regard to approval of resolution plan. Secondly, the department itself had filed a claim before the Resolution Professional, and accordingly, the argument that the department was not aware of the IBC proceedings holds no water.

13. Even assuming that the department was not informed about the proceedings, the law is very clear as expounded in the judgments cited above. The resolution applicant cannot be saddled with new claims once a resolution plan has been approved.

14. The argument that an assessment that has been kept pending for a prior

period and is quantified subsequent to the approval of the Resolution Plan is an argument in sophistry. If this argument is accepted then all authorities would be in a position to keep assessment/re-assessment pending till completion of the Resolution Plan, and thereafter, culminate the same and saddle the successful Resolution Applicant with an unknown burden. Such an action cannot be countenanced as the same would be an anathema to the fundamental principles of the moratorium provided under the Code. The law cannot be read in a manner wherein the basic structure of the Code is breached by hindering the flow of the same by creation of roadblocks and dams ? the underlying principle of the Code is to give a fresh start to the Resolution Applicant. Any new liability being fastened after the approval of the Resolution Plan would inherently and palpably be illegal and go beyond the Lakshman Rekha of the Code.

15. In light of the above, the impugned assessment order dated April 28, 2021 is quashed and set aside. In the event any penalty proceedings have been initiated by the department, the writ petitioner shall be at liberty to challenge the same in accordance with law."

6. The above view has been fortified by the Supreme Court in **Vaibhav Goyal & Another Vs. Deputy Commissioner of Income Tax & Another** [Civil Appeal No. 49 of 2022, decided on March 20, 2025] (SC). The relevant paragraphs are delineated below:

"8. In view of the declaration of law made by this Court, all the dues including the statutory dues owed to the Central Government, if not a part of the Resolution Plan, shall stand extinguished and no proceedings could be continued in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 of the IB Code. In this case, the income tax dues of the CD for the assessment years 2012-13 and 2013-14 were not part of the approved Resolution Plan. Therefore, in view of sub-section (1) of Section 31, as interpreted by this Court in the above decision, the dues of the first respondent owed by the CD for the assessment years 2012-13 and 2013-14 stand extinguished.

...

12. Once the Resolution Plan is approved by the NCLT, no belated claim can be included therein that was not made earlier. If such demands are taken into consideration, the appellants will not be in a position to recommence the business of the CD on a clean slate. On this aspect, we may note what is held in paragraph 107 of the decision of this Court in the case of Committee of Creditors of Essar Steel India Ltd. [Civil Appeal No. 49 of 2022]. Paragraph 107 reads thus:

"107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 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."

(emphasis added)

13. The additional demands made by the first respondent in respect of the assessment years 2012-13 and 2013-14 will operate as roadblocks in implementing the approved Resolution Plan, and appellants will not be able to restart the operations of the CD on a clean slate.

14. We, therefore, hold that the demands raised by the first respondent against the CD in respect of assessment years 2012-13 and 2013-14 are invalid and cannot be enforced. We set aside the impugned orders of NCLT and NCLAT and allow the appeal accordingly."

7. In view of the above law laid down by the Supreme Court, we are of the view that the principle is crystal clear that once Resolution Plan has been approved by the NCLT, all other creditors are barred from raising their claims subsequently, as the same would disrupt the entire resolution process. The Supreme Court has categorically held the same as indicated above.

8. In light of the same, we find no reason to keep this matter pending, and accordingly, the impugned Orders dated December 15, 2022 passed under Sections 28(2)(ii) of the U.P. Vat Act, 2008, Sections 9(4) and 12(3) of U.P. Tax on Entry of Goods Act, 2007, respectively as well as demand notice dated February 8, 2023 passed by respondent No.3 against the petitioner relating to financial year 2012-2013, are quashed.

9. The writ petition is accordingly allowed.

Order Date :- 9.7.2025

Kuldeep

(Praveen Kumar Giri, J.) (Shekhar B. Saraf, J.)