

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (I.B.) No. 880/KB/2024
In
C.P. (I.B.) No. 180/KB/2024**

***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:

Gandhamardhan Sponge Industries Pvt. Ltd.

... Applicant

Versus

Income Tax Department and Anr.

... Respondents

Date of Pronouncement: 17th September, 2024

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

APPEARANCE:

**Ms. Urmila Chakraborty, Adv.] For Applicant
Mr. Sidhartha Sharma, Adv.
Mr. Rishav Dutt, Adv.
Mr. Aman Kataruka, Adv.**

**Mr. Pranay Agarwal, Adv.] For the Respondent No.2
Ms. Sweta Majumder, Adv.**

ORDER

Per: D. Arvind, Member (Technical):

1. The Court congregated through hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This application has been preferred by **Gandhamardhan Sponge Industries Pvt. Ltd.** (hereinafter referred as "**Applicant/Corporate**")

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Debtor”) against the **Deputy Commissioner of Income Tax Circle One, Cuttack** (hereinafter referred as **“Respondent/IT Department”**). The present application has been instituted by the Successful Resolution Applicant (SRA) of **Gandhamardhan Sponge Industries Pvt. Ltd.** seeking:

- “a) An Order declaring the income tax notice dated 25.01.2024, is null and void;*
- b) An Order quashing or setting aside the purported demand notice dated 25.01.2024 and the main Order dated 28.03.2024, issued by respondent No. 1;*
- c) An Order declaring that the applicant is not liable to make any payment to the respondent for the past dues accrued prior to the date of resolution plan i.e. 25.03.2021;*
- d) Any other Order as this Hon’ble Tribunal may deem fit and proper;”*

Brief facts of the Case:

4. The present application has been preferred by the applicant seeking directions/reliefs mentioned above alleging the sanction of resolution plan by the respondent. This Adjudicating Authority approved the resolution plan of the corporate debtor, Gandhamardhan Sponge Industries Pvt. Ltd. *vide* its Order dated 25.03.2021.
5. The CIRP of the corporate debtor commenced on 04.10.2019, by virtue of an Order passed by this Adjudicating Authority and entered by way of approval of the resolution professional on 25.03.2021. List of dates and events has been captured in the form of a table as under:

Sl. No.	Date	Events
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1.	04.10.2019	CIRP of Corporate Debtor was commenced. (@pg. 34-40 of application)
2.	05.10.2019	Public Announcement of Form B made by IRP. (@pg. 41-42 of Application)
3.	18.08.2020	Respondent No. 1 had submitted its claim in Form B amounting to Rs. 55,46,41,862/- (@pg. 137-140 of Application)
4.	25.03.2021	This Adjudicating Authority approved the Resolution Plan submitted by Bhuwalka Developments Pvt. Ltd. for Corporate Debtor (@pg.43-124 of Application)
5.	24.03.2022	The Successful Resolution Applicant intimated the Respondent No. 1 that an amount of Rs. 4,43,72,000/- has been paid to the Respondent No. 1 (@pg. 141-146 of Application)
6.	25.01.2024	Respondent No. 1 issued a purported notice being under Section 148A(b) of the Income Tax Act, 1961 against the Corporate Debtor. (@pg. 125-127 of Application)
7.	03.02.2024	The Applicant replied to the purported notice by way of a representation. (@pg. 128-131 of Application)
8.	20.03.2024	Respondent No. 1 passed the impugned Order. (pg. 132-136 of Application)

- 6.** Pursuant to the publication in Form B inviting clients, the respondent No. 1 had submitted its claim for an amount of Rs. 55,46,41,862/-. As per the plan, an amount of Rs. 4,43,72,000/- must be paid and the same has been paid on 24.03.2022.
- 7.** In accordance with resolution plan duly approved by an Order dated 25.03.2021, passed by this Tribunal, the entire claim of the respondent for the period up to the date of approval of the resolution plan of the corporate debtor stands extinguished. Therefore, this notice which pertains to Financial Year 2019-2020 is not

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maintainable as any demand that can arise stood extinguished, in view of our Order approving resolution plan on 25.03.2021, and hence this application.

Ld. Counsel for Applicant:

8. Ld. Counsel for Applicant submits that a Successful Resolution Applicant takes over corporate debtor on a fresh led principal and assets any past dues or claims including respondent No. 1 herein stood extinguished and not proceedings can be initiated in respect of dues prior to the period of approval of the resolution plan. In this context, he relies on ***Ghanashyam Mishra & Sons Pvt. Ltd. V. Edelweiss Asset Reconstruction Company Ltd., reported in 2021 9 SCC 657 & Essar Steel Limited V. Satish Kumar Gupta reported in (2020) 8 SCC 531.***

Ld. Counsel for Respondent:

9. Ld. Counsel submits that the stand taken by the applicant is not acceptable and maintainable because the liability of the petitioner company for Assessment Year 2009-2010, 2010-2011, 2013-2014 and 2014-2015 was settled by this Adjudicating Authority *vide* its Order dated 25.03.1021. However, the current proceeding is in relation to Financial Year 2019-2020 (Assessment Year 2021). According to the Ld. Counsel this period is not covered by the Order which approved.
10. He relied on Hon'ble Supreme Court's judgment rendered in ***State Tax Officer Vs. Rainbow Papers Limited*** [citation] to claim that resolution applicant's approval is invalid for invoking the statutory dues of the tax authority. In view of above, he submits that the

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application is not maintainable and the same will have to be dismissed.

Analysis and Findings:

- 11.** We find that the Corporate Insolvency Resolution Process of the corporate debtor commenced on 04.10.2019, pursuant to which public announcement in Form B was made by the resolution professional on 05.10.2019, inviting claims from financial and operational creditors.

 - 12.** The respondent herein had submitted its claim in the relevant form amounting to Rs. 55,46,41,862/- on 18.08.2020. The CoC in their commercial wisdom allocated Rs. 4,43,72,000/- against the claimed amount and the same was approved by this Adjudicating Authority *vide* its Order dated 25.03.2021. It is a well-established law that the corporate debtor who comes out of insolvency resolution process by way of successful resolution of its insolvency cannot be settled with past dues as the successful resolution applicant takes over the corporate debtor on a fresh slate principal and assets as such, any dues claimed/unclaimed for the period up to the date of approval of the resolution plan stands extinguished as held by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra & Sons Pvt. Ltd. V. Edelweiss Asset Reconstruction Company Ltd., reported in 2021 9 SCC 657 and Essar Steel Limited V. Satish Kumar Gupta reported in (2020) 8 SCC 531.***

 - 13.** We find that the notice and demand in question is for the Financial Year 2020, whereas the resolution plan was approved on 25.03.2021. Therefore, any dues up to that period stood extinguished consequent to the approval of the resolution plan.
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- 14.** In view of above, we find no merit in the argument made by the respondent and consequently, this **I.A. No. 880/KB/2024** is **allowed and disposed of** by way of granting relief prayed for in this application.
- 15.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 17th day of September, 2024.

PH[PS]