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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 05.09.2023

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ITA 999/2017

THE PR. COMMISSIONER OF INCOME TAX -5 Appellant

Through: Mr Shailendra Singh, Sr. Standing Counsel
with Ms Anuja Pethia, Advocate

versus

JUBILANT ENERGY KHARSANG (P) LTD. Respondent

Through: Mr Rohit Jain with Mr Aniket D. Agrawal,
Mr Samarth Chaudhari and Mr Abhisek
Singhvi, Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal concerns Assessment Year (AY) 2008-09.
2. *Via* this appeal the appellant/revenue seeks to assail the order dated 30.12.2016, passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The appeal was listed before this court for hearing for the first time on 20.11.2017. Since the matter could not be taken up on that date, it was listed on 23.01.2018.



3.1 On 23.01.2018, notice was issued in the appeal, which was made returnable on 24.04.2018. Since service was not effected fresh notice was issued on 07.09.2018, which was returnable on 19.12.2018.

3.2 Service was ultimately completed on 13.03.2019. This is reflected in the order passed by the concerned Registrar on the said date.

4. Consequently, the matter was listed before the court on 03.04.2019.

5. A substantive hearing in the matter was held on 25.07.2023 before this bench, when the counsel for the respondent/assessee informed the court that a modified resolution plan was passed by the National Company Law Tribunal [in short, "NCLT"] on 04.02.2020. Furthermore, the court was also informed that in the resolution plan, as approved by the NCLT, there was no provision made *vis-à-vis* statutory dues.

5.1 Given this position, Mr Shailendera Singh, learned senior standing counsel, who appears on behalf of the appellant/revenue, sought accommodation to obtain instructions as to whether the appellant/revenue would want to press the appeal.

5.2. Mr Shailendera Singh made the request for accommodation having regard reference to the ratio of the following judgments:

(i) ***Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. Through The Director & Ors.,*** (2021) 9 SCC 657 and

(ii) ***Sree Metaliks Ltd. v. Additional Director General & Ors.,*** 2023/DHC/001118.

5.3. On that date, we had also directed counsel for the respondent to place on record the public notice issued by the Resolution Professional [in short,



“RP”], inviting claims in the matter.

6. Mr Rohit Jain, learned counsel, who appears on behalf of the respondent/assessee, says that pursuant to the direction, a compendium of documents was filed, which includes the “public announcement notice” dated 19.03.2017, issued by the RP.

7. A perusal of the said notice discloses that the RP called upon various categories of creditors, which included operational creditors, financial creditors as well as workmen and employees to file their respective proof of claim on or before 31.03.2017.

7.1 Evidently, the appellant/revenue did not lodge its claim before the RP.

8. The record shows that insofar as the respondent/assessee is concerned, the Corporate Insolvency Resolution Process [in short, “CRIP”] commenced on 19.03.2017.

9. The propounder of the resolution plan i.e., an entity going by the name Atyant Capital India Fund-1 presented a plan. This plan in the first instance was approved by the NCLT on 15.12.2017. The plan was, however, modified on 13.06.2019.

9.1 The result was that the amount that the secured creditors were to receive under the original plan, which was Rs.81 crores, was enhanced to Rs.123.1 crores.

10. As far as the distribution of the aforementioned amount i.e., Rs.123.1 crores is concerned, i.e., the improved corporate resolution plan, which was approved by the NCLT on 04.02.2020, provided for the following:



Sl.No.	Particulars	Amount Admitted	Amount Provided under the Resolution Plan
a.	Financial Creditors		
I.	Secured Financial Creditors		
	EXIM Bank, Central Bank of India, and State Bank of India	INR 1231.0 crores	Aggregate upfront cash consideration of INR 123.10 crores (including EMD of INR 15 crores).
II.	Unsecured Related Party Financial Creditors		
	JE Energy Ventures Private Limited	INR 7.57 crores	Nil
b.	Operational Creditors		
	Trade Payable	0.00	Nil
	Statutory Dues		Nil
	Employees and Workmen	0.00	Nil

10.1 It would be evident from the above extract that there was no provision made, *inter alia*, for statutory claims.

11. It is not in dispute, as has been noticed hereinabove, the concerned AY is AY 2008-09.

12. On merits, the Tribunal has ruled in favour of the respondent/assessee. However, at this juncture, as indicated hereinabove, we are only concerned



with the maintainability of the present appeal.

13. Having regard to the fact that the claims which are the subject matter of the present appeal concern the period prior to the approval of the resolution plan by the NCLT, in which no provision has been made for statutory dues, the continuation of this appeal would serve no purpose.

14. The court in these matters adopts a “clean slate” approach, and therefore, this appeal would have to be closed.

15. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J.

GIRISH KATHPALIA, J.

SEPTEMBER 5, 2023 / tr

