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

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Judgment reserved on: 17.11.2023
Judgment pronounced on: 12.12.2023

+ **W.P.(C) 10528/2022**

TUF METALLURGICAL PVT. LTD. Petitioner

Through: Mr Vaibhav Mahajan and Ms Shrishti Agrawal, Adv.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr Sunil Agarwal, Sr. Standing Counsel with Mr Shivansh B. Pandya, Jr. Standing Counsel and Mr Utkarsh Tiwari, Adv.
Ms Saroj Bidawat, SPC for R-1/UOI.+ **W.P.(C) 10628/2022**

DELHI BARODA ROAD CARRIER PRIVATE LIMITED

.... Petitioner

Through: Mr Vaibhav Mahajan and Ms Shrishti Agrawal, Adv.

versus

UNION OF INDIA THROUGH THE INCOME TAX
DEPARTMENT

.... Respondent

Through: Mr Sanjay Kumar, Sr. Standing Counsel with Ms Easha, Ms Hemlata Rawat, Standing Counsels.
Mr Shekhar Vyas and Ms Neha Warriar, for UOI.



CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

GIRISH KATHPALIA, J.:

1. These two writ petitions brought under Article 226/227 of the Constitution of India assail the tax claims of revenue in similar circumstances. The legal matrix being same, these petitions though filed by different parties are taken up together for disposal. We heard learned counsel for both sides.

2. For the sake of convenience, the prayer clauses of these writ petitions are extracted below:

“W.P.(C) 10528/2022

- a) *Issue a writ of Certiorari or any other appropriate Writ/Order(s)/Direction(s) to call for all the relevant records of Respondent No. 2 and to quash/set aside Assessment Order dt.12.12.2019 u/s 144 I.T. Act, along with consequential Demand Notice dt. 12.12.2019 u/s 156 I.T. Act imposing a tax liability of Rs. 9,71,79,357/- upon the Assessee for the Assessment Year 2017-2018, as being illegal, void and de-hors the binding provisions of the resolution plan, duly approved by the Hon'ble Adjudicating Authority vide order dt. 05.11.2019 u/s 31(1) of the IBC, 2016.*
- b) *Issue a writ of Certiorari or any other appropriate Writ/Order(s)/Direction(s) to call for all the relevant records of Respondent No. 2 and to quash / set aside Order dt.16.03.2022 under Section 270A I.T. Act levying an unwarranted penalty of Rs. 2,38,96,866/- upon the Assessee, along with corresponding Demand Notice dt. 15.03.2022 under Section 156 I.T. Act, as being illegal, void and de-hors the binding provisions of the resolution plan duly approved by the Hon'ble Adjudicating Authority vide order dt. 05.11.2019 u/s 31(1) of the IBC, 2016.*
- c) *Issue a writ of Certiorari or any other appropriate Writ/Order(s)/Direction(s) to call for all the relevant*



records of Respondent No. 2 and to quash / set aside Order dt. 25.03.2022 under Section 271AAC(1) I.T. Act, levying an unwarranted penalty of Rs.73,06,970/- upon the Assessee, along with corresponding Demand Notice dt. 24.03.2022 under Section 156 I.T. Act, as being illegal, void and de-hors the binding provisions of the resolution plan duly approved by the Hon'ble Adjudicating Authority vide order dt. 05.11.2019 u/s 31(1) of the IBC, 2016.

- d) Issue a writ of Certiorari or any other appropriate Writ/Order(s)/Direction(s) to call for all the relevant records of Respondent No. 2 and to quash/set aside Order dt. 10.09.2021 under section 272A(1)(d) of the I.T. Act levying an unwarranted penalty of Rs. 10,000/- upon the Assessee, along with corresponding Demand Notice dt. 10.09.2021 u/s 156 I.T. Act, as being illegal, void and de-hors the binding provisions of the resolution plan, duly approved by the Hon'ble Adjudicating Authority vide order dt. 05.11.2019 u/s 31(1) of the IBC, 2016.
- e) Issue a writ of Prohibition or any other appropriate Writ/Order(s)/Direction(s) to restrain and prohibit Respondent No. 2 from re-opening such claims against the Assessee/Petitioner which arise out of Pre-CIRP liabilities/obligations of the Assessee, as the same stood settled, waived and extinguished upon approval of the Resolution Plan by the Hon'ble Adjudicating Authority vide order dt. 05.11.2019 u/s 31(1) of the IBC, 2016.
- f) Issue any other Writ/Order(s)/Direction (s), as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

W.P.(C) 10628/2022

- a) issue a writ in the nature of CERTIORARI and quash the impugned Assessment Order dated 19.03.2022 under Section 143(3) read with 147, 143(34) & 143(3B), the impugned Demand Notice dated 19.03.2022 under Section 156, the impugned Show Cause Notice dated 19.03.2022 under Section 274 read with Section 271(1)(c) and the impugned Show Cause Notice dated 19.03.2022 under Section 274 read with Section 271(1)(b) of the Income Tax Act, 1961, being illegal and against the provisions of the Insolvency and Bankruptcy Code, 2016 and the law laid down by the Hon'ble Supreme Court of India;
- b) issue a writ in the nature of MANDAMUS and direct the Respondent to not initiate any further proceedings against the Petitioner, for any liability(s) pertaining to the period prior to its successful resolution under the Insolvency and



- Bankruptcy Code, 2016; and/or*
- c) *pass any other suitable writ, order or directions in favour of the Petitioner as this Hon'ble Court may deem fit and proper.”*

3. Succinctly stated, the facts relevant for present purposes are as follows.

3.1 The petitioner of WP(C) 10528/2022 (TUF Metallurgical Pvt. Ltd.) took over management of a company namely Albus India Ltd., the erstwhile corporate debtor in terms with Resolution Plan dated 20.05.2019, which plan submitted by the petitioner was accorded statutory approval under Section 31(1) of the Insolvency and Bankruptcy Code (hereinafter referred to as “the Code”) by the National Company Law Tribunal (hereinafter referred to as “the Tribunal”) vide order dated 05.11.2019 and consequently Albus India Ltd. became TUF India Ltd., which merged into the petitioner/assessee vide Confirmation Order dated 02.06.2022 operable with effect from 01.04.2021 of the competent authority of the Government of India. Pertaining to the commencement of the Corporate Insolvency Resolution Process (CIRP), a public advertisement under Section 15 of the Code was notified, declaring last date for submissions of claims as 21.01.2019. But till 21.01.2019 or even thereafter, the respondent/revenue opted not to submit any claim. On 02.12.2019, an intimation regarding approval of the Resolution Plan and change of management of Albus India Ltd under order dated 05.11.2019 of the Tribunal was communicated to the Assistant Commissioner of Income Tax, Circle-2(2), Delhi by the Chairman of the Monitoring Committee to implement the approved plan. It is thereafter that the respondents/revenue passed Assessment Order and Demand Notice, both dated 12.12.2019 against the petitioner/assessee qua Assessment Year 2017-18, raising a tax claim of



Rs.9,71,79,357/-. Thereafter, order dated 10.09.2021 under Section 272A(1)(d) of the Act and a Demand Notice dated 10.09.2021 were issued by the respondents/revenue, thereby levying penalty in the sum of Rs.10,000/- against the petitioner/assessee. Thereafter, two show cause notices both dated 27.01.2022 under Sections 270A and 270AAC(1) of the Act were served by the respondents/revenue on the petitioner/assessee, who sent replies dated 27.01.2022, claiming that the demands were barred and extinguished consequent upon approval of the Resolution Plan by the Tribunal. The respondents/revenue issued demand notice dated 15.03.2022 under Section 156 of the Act, followed by order dated 16.03.2022 under Section 270A of the Act, levying penalty of Rs.2,38,96,866/- against petitioner/assessee. Finally, the respondents/revenue issued Demand Notice dated 24.03.2022 and order dated 25.03.2022, levying penalty in the sum of Rs.73,06,970/- against the petitioner/assessee. Hence, the present writ petition WP(C) 10528/2022.

3.2 The petitioner of WP(C) 10628/2022 is a company duly incorporated under the provisions of the Companies Act 1956 and is engaged in business of transport and logistics services. On 24.09.2019, the Tribunal admitted an application under Section 7 of the Code and initiated CIRP, declaring moratorium under Section 14 of the Code qua the petitioner. On 30.09.2019, a public advertisement of initiation of CIRP was issued in respect of the petitioner under Section 13 of the Code. The Committee of Creditors of petitioner approved with 91.56% votes a Resolution Plan for petitioner, as submitted by the consortium of Delhi Gujarat Road Carrier and Sushila Transport Pvt. Ltd. (the successful resolution applicant, SRA). On 10.12.2020, the Resolution Professional of petitioner filed an application



under Section 31(1) of the Code before the Tribunal as regards the resolution plan approved by the Committee of Creditors. Thereafter on 31.03.2021, the respondent/ revenue issued notice under Section 148 of the Act, thereby proposing to assess/reassess the income/loss of petitioner for the Assessment Year 2014-15 and directing the petitioner to submit a return in the prescribed form. Further, on 23.11.2021, 22.12.2021, 09.02.2022 and 17.02.2022 the respondent/revenue issued notices under Section 142 of the Act to the petitioner, seeking certain information and explanation for the purposes of assessment/reassessment. On 21.02.2022, the Tribunal passed order under Section 31(1) of the Code, thereby approving the final resolution plan submitted for petitioner by the SRA. On 05.03.2022, the petitioner/assessee submitted a communication, calling upon the respondent/revenue to withdraw the aforesaid notices and to terminate the proposed assessment proceedings for Assessment Year 2014-15. But on 15.03.2022, the respondent/revenue issued show cause notice under Section 144 of the Act calling upon the petitioner/assessee to respond as to why the proposed assessment/reassessment be not completed. In response, on 16.03.2022, the petitioner/assessee submitted a communication calling upon the respondent/revenue to withdraw the said notice as well as the previous notices and orders on account of successful resolution under the Code. However, 19.03.2022, the respondent/revenue passed the assessment order under Section 143(3) of the Act in respect of income of the petitioner/assessee for the Assessment Year 2014-15. Finally, on 19.03.2022, the respondent/revenue issued Demand Notice, calling upon the petitioner/assessee to deposit Rs.33,08,070/- in respect of Assessment Year 2014-15 within thirty days failing which the petitioner would be liable to pay interest, penalty and recovery proceedings under the Act; simultaneously on



19.03.2022, the respondent/revenue also issued show cause notice under Section 274 of the Act for penalty under Section 271(1)(b) of the Act. Hence, the present writ petition WP(C) 10628/2022.

4. During final arguments, learned counsel for petitioner/assessee contended that the respondent/revenue arbitrarily issued the impugned orders and demand notices, ignoring the factual and legal ramifications which ensued upon conclusion of the insolvency proceedings of the petitioner/assessee, wherein a Resolution Plan qua the petitioner/assessee for its revival and resurrection was duly approved by the concerned authority vide order dated 05.11.2019; that it was not open for the respondents/revenue to reopen its stale claims which already stood settled, fully and finally, upon conclusion of the insolvency proceedings of the petitioner/assessee vide order dated 05.11.2019; that all the alleged demands/claims accruing out of pre-CIRP liabilities/obligations of the petitioner/assessee were rendered infructuous upon approval of the Resolution Plan under Section 31(1) of the Code. In support of his contentions, learned counsel for the petitioner/assessee referred to the decision of the Supreme Court in the case of *Ghanshyam Mishra & Sons Pvt Ltd. vs Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657. Per contra, learned counsel for respondents/revenue supported the impugned notices and orders, contending that the revenue stands on footing different from rest of the creditors, therefore, the income tax claims of the revenue shall stand not affected by the provisions of the Code. However, despite opportunities, the respondents/revenue did not file counter-affidavit in either of these cases in order to rebut the averments of facts pleaded in these writ petitions.



5. Thence, the short question before us is as to whether the respondent/revenue can justifiably claim and recover from the petitioners any amount of money towards income tax that accrued prior to approval of Resolution Plan under Section 31 of the Code.

6. In the case of **Ghanshyam Mishra** (supra), relied upon by the petitioner/assessee, it was held by the Supreme Court as under:

“94. We have no hesitation to say that the words “other stakeholders” would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation.

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102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in 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. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of 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.

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102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

7. The above quoted legal position and the judicial precedent were reiterated and referred to in the subsequent judgments in the cases of **Ruchi**



Soya Industries Ltd vs Union of India, (2022) 6 SCC 343 and *Sree Metaliks Ltd vs Additional Director General & Ors*, 2023/DHC/001118. Most recently, vide order dated 07.07.2023, the Supreme Court, referring to the law laid down in the case of *Ghanshyam Mishra* (supra) summarily dismissed a bunch of appeals in case titled *Commissioner of Central Excise and Service Tax Vadodra I vs EMCO Ltd* (Civil Appeal no. 8189/2019 with Civil Appeals No. 5701-5703 of 2019).

8. In the present cases, as described above, the admitted factual matrix is that the notices and orders impugned in these writ petitions pertain to the income tax claims of the respondents/revenue pertaining to the period much prior to the date of approval of the Resolution Plan. The impugned notices and orders were issued by the respondents/revenue admittedly subsequent to the public announcement under Section 15 of the Code regarding CIRP process pertaining to the petitioner/assessee. As noted above, pertaining to the WP(C) 10528/2022, the public announcement under Section 15 of the Code called for submission of claims by 21.01.2019, but the respondents/revenue did not file any claim till that date or even thereafter; it is only subsequent to approval of the Resolution Plan vide order dated 05.11.2019 of the Tribunal, (*which order was communicated to respondents/revenue on 02.12.2019*) that the respondents/revenue issued the impugned Assessment Order and Demand Notice both dated 12.12.2019. Similarly, in the other writ petition WP(C) 10628/2022, the impugned notices and orders were issued by the respondents/revenue much subsequent to the public announcement dated 30.09.2019 of commencement of CIRP under Section 13 of the Code; vide order dated 21.02.2022, the Tribunal approved the final Resolution Plan and that order was communicated by the



petitioner/assessee to the respondents/revenue, calling upon the latter to withdraw the earlier notices, but to no avail.

9. In nutshell, the Resolution Plans qua the petitioners/assesseees having been approved by the National Company Law Tribunal on 05.11.2019 (*in WP(C) 10528/2022*) and on 21.02.2022 (*in WP(C) 10628/2022*), the tax claims pertaining to the Assessment Year 2017-18 (*in WP(C) 10528/2022*) and Assessment Year 2014-15 (*in WP(C) 10628/2022*) stood extinguished.

10. The argument on behalf of respondents/revenue that being the State exchequer, it cannot be bound by the Resolution Process provisions of the Code has been recorded only to be rejected in view of the above quoted extract from the judgment in the case of *Ghanshyam Mishra* (supra).

11. In view of the aforesaid, both these writ petitions are allowed and consequently, the notices and orders impugned in the same are set aside.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

DECEMBER 12, 2023/as

