

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 86949 of 2015

(Arising out of Order-in-Original No. 06/Service Tax-V/RS/2015-16 dated 29.06.2015 passed by the Commissioner of Service Tax-V, Mumbai)

M/s Jet Airways (India) Limited

Siroya Centre, Sahar Airport Road,
Andheri (East), Mumbai - 400059.

.....Appellant

VERSUS

Commissioner of Service Tax-V, Mumbai

3rd Floor, Utpad Shulk Building, Bandra Kurla Complex,
Mumbai-400 051.

.....Respondent

Appearance:

Shri Gopal Mundra, Advocate for the Appellant

Shri Anand Kumar, Authorized Representative for the Respondent

AND

Service Tax Appeal No. 87287 of 2015

(Arising out of Order-in-Original No. 06/Service Tax-V/RS/2015-16 dated 29.06.2015 passed by the Commissioner of Service Tax-V, Mumbai)

Commissioner of Service Tax-V, Mumbai

3rd Floor, Utpad Shulk Building, Bandra Kurla Complex,
Mumbai-400 051.

.....Appellant

VERSUS

M/s Jet Airways (India) Limited

Siroya Centre, Sahar Airport Road,
Andheri (East), Mumbai - 400059.

.....Respondent

Appearance:

Shri Anand Kumar, Authorized Representative for the Appellant

Shri Gopal Mundra, Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85896-85897/2023

Date of Hearing: 17.02.2023

Date of Decision: 12.05.2023

PER : M.M.PARTHIBAN

These appeals have been filed under Section 86 of the Finance Act, 1994 (for short, 'the said Act'), against the Order-in-Original No. 06/Service Tax-V/RS/2015-16 dated 29.06.2015 (herein referred to as 'impugned order') passed by the Commissioner of Service Tax-V, Mumbai. Both the parties, namely M/s Jet Airways (India) Limited, Mumbai (referred to as appellant-assessee) and the Revenue have filed these appeals against the impugned order before this Tribunal.

2.1. Briefly stated, the facts of the case are that in a show cause notice proceedings initiated under Section 73(1A) of the said Act for recovery of service tax on code share charges and inter airline service charges, the Commissioner of Service Tax-V, Mumbai had adjudged the case confirming the demands for Rs.20,28,56,543/- along with applicable interest, besides imposition of penalty under Section 78 of the said Act vide the impugned order. During the pendency of these appeals, the appellant-assessee faced financial difficulties and an application was filed by one of the financial creditors under Section 7 of the Insolvency and Bankruptcy Code, 2016 for recovering debts owned by the appellant-assessee company. The National Company Law Tribunal, Hyderabad Bench (NCLT) issued an order dated 20.06.2019 for initiating Corporate Insolvency Resolution Process (CIRP) in regard to the appellant-assessee company under Section 13 of IBC. Accordingly, a Resolution Plan was floated by the Resolution Professional for approval of the Committee of Creditors. The Resolution Plan submitted before NCLT was approved by NCLT vide order dated 22.06.2021 and the Resolution Plan is effective from this date, i.e., the NCLT Approval Date.

2.2. The learned Advocate further submitted that Revenue was one of the operational creditors and on the basis of the Resolution Plan, the liquidation value due to the operational creditors including taxes is presumed to be NIL.

Hence he pleaded that the Resolution Plan approved by NCLT is binding in nature. In support of the same, he quoted the decision of the Hon'ble Supreme Court in the case of Committee of Creditors of Essar Steel India Ltd., Vs. Satish Kumar Gupta & Ors. (2020) 8 SCC 531.

2.3. The learned Authorised Representative reiterated the findings in the impugned order and the grounds of the appeal made by the Revenue.

3. Heard both sides and perused the case records. When the matter was taken up for consideration, the Learned Advocate for the appellants and the Learned Counsel for the respondent submitted that the issue involved herein is covered by the judgment of Coordinate Bench of this Tribunal in Final Order No. A/86026-86036/2022 dated 19.07.2022 in their own case.

4. We also find that the matter is no more *res integra*, as the Hon'ble Supreme Court in Civil Appeal No. 8129 of 2019, in the case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. vide judgement dated 13.04.2021, had decided the settled position of law, as under:-

"2. The short but important questions, that arise for consideration in this batch of matters, are as under:-

(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'I&B Code')?

(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory / declaratory or substantive in nature?

(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate

Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?

.....

CONCLUSION

95. *In the result, we answer the questions framed by us as under:*

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (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;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) 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 the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

5. We also find that CBIC has vide Instruction No.1083/04/2022-CX9 dated 23.05.2022 has laid down the guidelines in the form of Standard Operating Procedure (SOP) for handling the NCLT cases by the department, and reiterated the legal position that as operational creditors, GST and Customs authorities are required to submit their claims against the corporate debtors when the corporate insolvency and resolution process has been initiated. Once the Resolution plan is approved by NCLT, no demands can be raised on the Resolution Applicant. The relevant paragraph of said instructions is extracted below:

"C.B.I. & C. Circular No. 1083/04/2022-CX.9
F. No. 296/286/2021-CX. 9

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Indirect Taxes & Customs, New Delhi

Dated 23.05.2022

To All Principal Chief Commissioner(s)/ Chief Commissioner(s) of Customs/
Customs (Preventive)/ Customs & CGST, All Principal Chief Commissioner(s)/
Chief Commissioner(s) of CGST, Webmaster: cbic@icegate.gov.in

Madam/Sir,

*Subject: Standard Operating Procedure (SOP) for NCLT cases in respect
of the Insolvency and bankruptcy Code (IBC) – reg.*

*I am directed to inform the Insolvency and Bankruptcy Board of India
has requested that role of GST and Customs authorities in certain key issues
under the Insolvency and bankruptcy Code, 2016 needs to be formulated.
Further, GST and Customs Authorities have been classified as operational
creditors and are required to submit their claims against corporate debtors
when the Corporate insolvency and resolution process is initiated and public
announcement inviting claims is made by the insolvency professional.*

*2. A timeline of 90 days from the insolvency commencement date is
available for filing of claims. However, it has been observed that there is an
inordinate delay in filing of claims by Customs and GST authorities. This
leads to their claims not being admitted and extinguished once a resolution
plan is approved. It is also observed that the authorities then litigate on the
rejection of each claims, despite the settled position that no claims can be
raised once the plan is approved and no demands can be raised on the
Resolution Applicant who has taken over the company through such a
resolution plan."*

6. Appellant-assessee has also claimed that the refund of pre-deposit to be paid to them at the time of filing the captioned appeal. In this regard, we find that the matter has already been decided by the Hon'ble Supreme Court in the case of Ruchi Soya [2022 (380) ELT 8 (SC)]. The relevant paras of the judgement is extracted as follows:

*"14. Admittedly, the claim in respect of the demand which is the
subject matter of the present proceedings was not lodged by the
respondent No. 2 after public announcements were issued under
Sections 13 and 15 of the IBC. As such, on the date on which the
Resolution Plan was approved by the Learned NCLT, all claims stood*

frozen, and no claim, which is not a part of the Resolution Plan, would survive.

15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."

7. However from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become *functus officio* in the matters relating to this appeal.

8.1. In view of the order passed by the Co-ordinate Bench of this Tribunal vide Final Order No. A/86026-86036/2022 dated 19.07.2022 and on the basis of the judgement of the Hon'ble Supreme Court in Ghanashyam Mishra (*supra*) and upon taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the corporate debtor of the appellant-assessee company, we are of the view that the appeals before this Tribunal are abated.

8.2. Both the appeals filed by the appellant-assessee and the Revenue are disposed of accordingly.

(Order pronounced in the open court on 12.05.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)