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

% *Judgment reserved on : 17.08.2023*
Judgment pronounced on : 31.10.2023

\+ **W.P.(C) 13188/2018**

TATA STEEL LIMITED ..... Petitioner
Through : Dr. Abhishek M. Singhvi, Mr Rajiv Nayar, Senior Advocates with Mr Shashank K Gautam, Mr Arvind Thapliyal, Mr Siddharth Pandey, Ms Saravna Vasanta, Mr Aavishkar Singhvi and Mr Siddharth Seem, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr Zoheb Hossain, Sr. Standing Counsel with Mr Sanjeev Menon, Jr Standing Counsel for Revenue.

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

RAJIV SHAKDHER, J.:

Background and Facts

1. At the outset, it is noted that even though the petitioner has not filed an amended memo of parties, the cause title, as captured above, reflects the amended name of the petitioner, as per this Court's order dated 24.03.2022.

2. This writ action seeks to lay challenge to the notice dated 28.08.2018 issued under Section 221(1) of the Income Tax Act, 1961 [in short, "the Act"] and the order dated 17.10.2018. *Via* order dated 17.10.2018, the respondent [hereafter referred to as "revenue"] rejected the petitioner's, i.e.,

Tata Steel Ltd.'s [hereafter referred to as "TSL"], objections preferred *qua* the notice dated 28.08.2018.

2.1 The impugned notice dated 28.08.2018 called upon TSL to deposit tax against demands for Assessment Years (AYs) 2001-02, 2009-10, 2010-11 and 2013-14. The cumulative value of the demand raised for the said AYs is Rs. 257,80,81,038/-. Besides this, the revenue *via* the very same notice, sought a response from TSL as to why a penalty under Section 221(1) of the Income Tax Act, 1961 [in short, "Act"] ought not to be imposed.

3. TSL has approached this Court by way of the instant writ petition, questioning the very jurisdiction of the revenue to enforce the demand for tax and penalty. The broad ground on which TSL seeks to assail the demand raised by the revenue is that it concerns periods which precede the date of approval of the Resolution Plan [in short, "RP"] by the concerned bench of National Company Law Tribunal [NCLT] and, therefore, fall within the ambit of the "clean slate" principle. In other words, the submission is that once the RP is approved, all stakeholders, i.e., secured creditors, unsecured creditors, shareholders, workers and employees, are bound by the terms contained therein. In this context, TSL asserts that the revenue is not any different from the other creditors.

3.1 Quite obviously, the revenue contends to the contrary.

4. Thus, for adjudication of the instant writ action, the following broad facts are required to be noticed:

5. The corporate entity against which a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereafter referred to as "2016 Code"] was filed by one of the financial creditors, i.e., State Bank of India [SBI], went by the name Bhushan Steel Ltd. [BSL]. The adjudicating

authority, i.e., the concerned bench of NCLT, admitted SBI's application on 26.07.2017. *Via* the said order, the NCLT issued two significant directions. Firstly, it appointed an Interim Resolution Professional [IRP] and, secondly, imposed a moratorium, in consonance with the provisions of the 2016 Code.

6. The revenue, against the public announcement dated 26.07.2017 [which was published in (three) newspapers on 28.07.2017], submitted its claims with the IRP in the prescribed form on 28.09.2017, 24.10.2017 and 25.10.2017.

6.1 The claims lodged by the revenue related to the AYs 2009-10, 2010-11 and 2013-14.

6.2 As indicated above, the impugned demand notice dated 28.08.2018, apart from the AYs referred to above, also alludes to the demand *qua* AY 2001-02.

7. Insofar as AY 2001-02 is concerned, the revenue sought to tax the subsidy received by BSL [as it then existed] from the State Government of Uttar Pradesh for setting up a plant at Sahibabad. The addition made by the Assessing Officer (AO) in this regard, was reversed by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] *via* an order dated 31.03.2003. The appeal preferred by the revenue against the CIT(A)'s order was dismissed by the Income Tax Appellate Tribunal [in short, "Tribunal"] *via* order dated 05.01.2005. The revenue, however, succeeded in persuading this Court to rule in its favour in an appeal preferred by it. *Via* order dated 04.08.2017, this Court held that the sales tax subsidy received by BSL was in the nature of a revenue receipt and, hence, was taxable.

7.1 Thus, the demand outstanding for AY 2001-02, as per the impugned notice dated 28.08.2018, is Rs.3,52,12,038/-.

8. Insofar as AYs 2009-10, 2010-11 and 2013-14 are concerned, reassessment proceedings were triggered against BSL in 2015. Consequentially, an assessment order under Section 153A, read with Section 143(3) of the Act, was passed on 30.12.2016. However, the appeal lodged with CIT(A) by BSL was rejected *via* order dated 29.12.2017. Furthermore, the CIT(A) also triggered penalty proceedings against BSL under Section 271(1)(c) of the Act *via* an order dated 23.04.2018. TSL's challenges to the orders of the CIT(A) dated 29.12.2017 and 23.04.2018 are currently pending before the Tribunal. It is against this backdrop that *via* the impugned order dated 28.08.2018, demands were raised for the aforementioned AYs, i.e., AYs 2009-10, 2010-11 and 2013-14.

8.1 The initiation of penalty proceedings ultimately resulted in the imposition of a cumulative penalty amounting to Rs. 2,542,869,000/- *via* order dated 23.04.2018 concerning AYs 2009-10, 2010-11 and 2013-14.

9. Thus, the cumulative demand, as indicated hereinabove, which included AY 2001-02, was pegged at Rs.257,80,81,038/-. The break-up of the cumulative demand is set forth hereafter:

Sr.No.	*AY.*	*Total Demand*
1.	*2001-02*	*3,52,12,038/-*
2.	*2009-10*	*84,24,32,000/-*
3.	*2010-11*	*23,96,46,000/-*
4.	*2013-14*	*146,07,91,000/-*
	Total	*257,80,81,038/-*

10. Importantly, the claims lodged by the revenue with the Resolution Professional prior to the approval of the RP concern only the principal demand and interest. The penalty imposed *via* order dated 23.04.2018 did

not form part of the claims lodged by the revenue.

11. It is vital to bear in mind the enormity of the financial difficulty that BSL was facing. The Resolution Professional, in all, had received claims worth Rs.56,080/- crores from 53 financial creditors and claims amounting to Rs.2,486.52 crores from 751 operational creditors (which included workers, employees and statutory creditors). Besides this, the Resolution Professional had also received claims pegged at Rs.0.22 crores from two creditors. These were claims, as indicated above, received up until 20.03.2018.

11.1 An RP was filed by TSL, amongst others. The RPs filed went through the usual rigours of the 2016 Code. Finally, the RP filed by TSL was approved by the Committee of Creditors (COC) on 20.03.2018. The RP approved by the COC included claims submitted by the creditors up to 20.03.2018 and verified by the Resolution Professional. The final list of creditors was published accordingly.

12. The RP submitted by TSL on 03.02.2018 was approved by the NCLT on 15.05.2018. Pursuant to the NCLT's order dated 15.05.2018, Bamnipal Steel Ltd., a wholly-owned subsidiary of TSL, took over the management of BSL.

12.1 Notably, the appeals preferred against the NCLT's order dated 15.05.2018 were dismissed by the National Company Law Appellate Tribunal [NCLAT] *via* order dated 10.08.2018.

13. At this juncture, it would be relevant to note that against the aforementioned judgment of this Court dated 04.08.2018 concerning AY 2001-02, a special leave petition [SLP No.849-850/2018] was preferred. *Via* order dated 13.08.2018, the Supreme Court granted leave and tagged the

matter with other special leave petitions, in which stay had already been granted. The said SLP is currently pending before the Supreme Court.

14. Immediately thereafter, the revenue issued the impugned notice dated 28.08.2018 to the then-subsisting entity, i.e., BSL. The notice was followed by the impugned order dated 17.10.2018, whereby BSL's objections were rejected *via* communication dated 26.09.2018 against recovery of demand.

14.1 The record shows that a reply dated 26.09.2018 was filed on behalf of BSL to the impugned notice dated 28.08.2018.

14.2 The contentions raised on behalf of BSL in the reply dated 26.09.2018 did not find favour with the revenue and, thus, resulted in the issuance of the impugned order dated 17.10.2018.

14.3 Following the issuance of the impugned order, the revenue filed an updated claim in the prescribed form dated 20.09.2018 with the Resolution Professional. The updated claim included the amounts concerning all four relevant AYs, as mentioned in the impugned notice and order, the cumulative figure being Rs. 2,57,81,51,038/-. However, the updated claim was filed, as is evident, after the date on which the RP was accepted by the NCLT, i.e., 15.05.2018. Notable, the revenue, for the first time communicated its claim *vis-à-vis* the demand for AY 2001-02 and penalty for all four relevant AYs to the Resolution Professional, *via* the updated claim.

15. On 27.11.2018, BSL's name was changed to Tata Steel BSL Ltd. [TSBSL]. The record also discloses that a scheme of amalgamation was filed with NCLT (Mumbai) concerning TSBSL and TSL. *Via* order dated 29.10.2021, NCLT(Mumbai) sanctioned the scheme of amalgamation whereby TSBSL merged with TSL.

16. In the interregnum, i.e., while TSBSL existed, the instant writ petition was filed. This Court issued notice in the writ action on 06.12.2018, and by way of interim direction, the revenue was ordered to maintain status quo concerning the impugned demand. On 24.04.2019, the Court observed that the "interim order passed in the matter will continue to bind the parties". This order was made absolute on 21.08.2019, and accordingly, CM No.51184/2018 was disposed of.

17. On an application [i.e., CM No.14212/2022] being moved to bring on record the factum of amalgamation/merger, an order dated 24.03.2022 was passed by this Court, allowing the prayer made therein. Consequently, as noted by us at the outset, the petitioner was ordered to be described as TSL.

17.1 Final arguments were heard on 17.08.2023, when judgment was reserved.

Submissions of Counsel

18. It is in this background that arguments were advanced on behalf of TSL by Messrs Abhishek Manu Singhvi, Rajiv Nayyar, learned senior counsel, assisted by Mr Shashank Gautam, Mr Arvind Thapliyal, Mr Siddharth Pandey, Ms Saravana Vasanta, Mr Aavishkar Singhvi and Mr Sihddharth Seem. At the same time, Mr Zoheb Hossain, learned senior standing counsel made submissions on behalf of revenue, assisted by Mr Sanjeev Menon, learned standing counsel.

19. Broadly, on behalf of TSL, the following submissions were made:

19.1 The revenue was an operational creditor within the meaning of Section 5(20) of the 2016 Code. The demand raised by the revenue towards tax and penalty was an operational debt, as per the provisions of Section 5(21) of the

2016 Code. The tax demand raised by the revenue was the subject matter of the claims lodged by it with the Resolution Professional. With the approval of the Resolution Professional, the liability of the erstwhile corporate debtor, i.e., BSL, stood frozen. Thus, all those claims, such as those of the revenue, which are not part of the approved RP, stand extinguished and hence cannot be recovered. [See ***Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Construction Co. Ltd***., 2021 INSC 250; ***Ruchi Soya Industries Ltd. v. Union of India & Ors***. (2022) 6 SCC 343; ***Shree Metaliks Ltd. v State of Odisha and Ors***. 2023/DHC/001118; and ***Adhunik Metaliks Ltd. v State of Odisha and Ors.***, rendered by the Orissa High Court in WP (C) 8259/2019].

19.2 Clause 8.2.6 of the approved RP specifically adverts to tax liabilities arising under applicable laws, concerning periods before the effective date, i.e., 15.05.2018. As per this clause, all such liabilities stand extinguished, and nothing is due and payable by TSL except to the extent provided in the approved RP. In this context, reference is made to Clause 8.6.10 of the approved RP.

19.3 The revenue did not lodge any claim concerning penalty. Thus, as per Clause 8.6.11, such claims stand irrevocably and unconditionally extinguished.

19.4 A conjoint reading of Clauses 8.2.6, 8.6.10 and 8.6.11 of the approved RP, along with the provisions of the 2016 Code, would demonstrate that nothing is due and payable by TSL, against the impugned demand.

19.5 TSL, i.e., the successful resolution applicant, cannot be made to bear the burden of undecided claims lodged by creditors [which includes the revenue], except as per the terms contained in the RP. [See ***Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta***, (2019) SCC

Online SC 1478].

19.6 The 2016 Code overrides the provisions of the 1961 Act to the extent that the latter is inconsistent with the provisions of the former. Section 238 of the 2016 Code, a non-obstante clause, makes this abundantly clear. [See ***PCIT v. Monnet Ispat & Energy Ltd***., (2018) SCC Online SC 984] In any event, the 2016 Code is a special enactment, dealing with aspects concerning insolvency and, therefore, it would prevail over the provisions of the 1961 Act.

19.7 The liquidation value of the assets was 'nil'; therefore, had the corporate debtor been liquidated, the waterfall mechanism provided in Section 53 of the 2016 Code would have kicked in, resulting in the revenue receiving nothing against the impugned demand.

19.8 Since TSL has questioned the jurisdictional tenability of the impugned demand, the subsistence of alternative remedy cannot come in the way of this Court entertaining and dealing with the instant writ action.

20. On the other hand, in rebuttal, Mr Zoheb Hossain made the following submissions:

20.1 The 2016 Code prohibits recovery of outstanding demands, albeit on the relevant date. Section 248 of the 2016 Code does not prohibit the revenue from taking recourse to the provisions of the 1961 Act and the rules framed thereunder continuously. Hence, the impugned demand is valid in the eyes of the law.

20.2 TSL should have taken recourse to the remedies available under the 1961 Act and the rules framed thereunder. The impugned notice dated 28.08.2018 required the production of challans for tax, if any, deposited concerning AYs 2001-02, 2009-10, 2010-11 and 2013-14 to update the

revenue's record. This information was required to be submitted by 06.09.2018. Since the information was not furnished, a reminder was sent on 07.09.2018. Further time was accorded till 17.09.2018. In response to the said reminder, a reply [in the form of objections] dated 27.09.2018 was submitted, which questioned the legal tenability of the demand raised, for periods before the NCLT's order dated 15.05.2018. The impugned order dated 17.10.2018, while rejecting the objections raised *qua* the impugned demand, requested that a schedule be submitted for payment of the demanded amounts, including the penalty levied by the CIT(A) *via* order dated 23.04.2018, which became due on 25.05.2018, i.e., after the RP was approved.

20.3 Since this Court, *via* order dated 04.08.2017, had sustained the addition made by the assessment order concerning AY 2001-02, the demand raised was revised, which, as noted above, formed part of the order dated 17.10.2018. It is in this context that *via a* letter dated 23.05.2018, BSL was called upon to give details about its organizational and management structure. Although the information was required to be furnished, the response that the revenue received was that since the new management was taking over BSL's affairs, a month was needed to furnish the information. It is, thus, clear that no order or information about the Corporate Insolvency and Resolution Process [CIRP] was provided to the revenue. Given this position, the revenue served upon BSL the impugned order dated 28.08.2018, followed by a communication dated 07.09.2018.

20.4 Since the demands raised *via* the impugned notice dated 23.08.2018 were in addition to the demand reported during the resolution process, the revenue commenced a process for recovery of the impugned demand.

20.5 The impugned demand was raised because the revenue was advised that there was no prohibition in the 2016 Code to undertake any proceedings, including reassessment proceedings, for the period before the approval of the RP. As a matter of fact, an application dated 25.10.2018 was filed under Section 220(3) of the 1961 Act for staying the demand for AYs 2010-11 and 2013-14. The said application was rejected by the revenue *via* the order dated 02.11.2018, requesting that a plan be submitted for liquidating the dues by 15.11.2018. Since a communication dated 12.11.2018 was received by the revenue on 15.11.2018, with the request to keep the recovery of dues pending till the disposal of the application for stay filed with the Joint Commissioner of Income Tax, the recovery was kept in abeyance concerning AYs 2010-11 and 2013-14. However, the revenue received no intimation concerning the demand status *vis-à-vis* AY 2001-02.

Reasons and analysis

21. The controversy falls in a narrow compass after hearing learned counsel for the parties. The issue which requires consideration is whether the revenue is entitled to recover dues for the period which precedes the date of approval of the RP by the NCLT. The revenue claims that Section 238 of the 2016 Code does not impede its powers to pursue assessment or reassessment proceedings concerning the AYs in issue, i.e., AYs 2001-02, 2009-10, 2010-11 and 2013-14, as the dues concerning the AYs mentioned above were not outstanding on the date when NCLT, i.e., on 15.05.2018 approved the RP. Furthermore, the revenue also claims that it had no information on the onset of CIRP, although the information in that behalf had been sought from BSL.

22. This stance of the revenue has to be examined in the backdrop of the

following admitted facts:

22.1 Firstly, the insolvency proceedings against BSL were triggered by one of the secured creditors, i.e., SBI, by preferring a petition under Section 7 of the 2016 Code.

22.2 Secondly, the petition was admitted by the NCLT on 26.07.2017.

22.3 Thirdly, a public announcement dated 26.07.2017 was published widely in national and regional dailies by the IRP on 28.07.2018.

22.4 Fourthly, the revenue lodged its claims with the Resolution Professional on 28.09.2017, 24.10.2017 and 25.10.2017. The lodged claims concerned the tax demand *vis-à-vis* AYs 2009-10, 2010-11 and 2013-14, sans the tax demand for AY 2001-02 and the amount claimed towards penalty.

23. The assessment order *vis-à-vis* AYs 2009-10, 2010-11 and 2013-14 was passed on 30.12.2016. The appeal preferred against the assessment order was dismissed by the CIT(A) on 29.12.2017. *Via* the same order, CIT(A) also triggered penalty proceedings, culminating in the order dated 23.04.2018. An appeal against the order of the CIT(A) dated 23.04.2018 was lodged with the Tribunal, which as per the record made available to the Court, appears to be pending adjudication.

23.1 Likewise, insofar as AY 2001-02 was concerned, the assessment order was passed on 28.02.2003. After going through various tiers, the tenability of the addition made by the AO by treating sales tax subsidy received by BSL at the relevant point in time as revenue receipt is currently pending adjudication before the Supreme Court.

24. Given this factual position, in our opinion, the stand taken by the revenue that the demands for the AYs in issue were not outstanding at the

time of the RP being accepted, if agreed with, would amount to splitting hairs. As noted above, the assessment order was passed on 30.12.2016. The application to initiate insolvency proceedings under Section 7 of the 2016 Code was admitted only thereafter, i.e., 26.07.2017. As indicated above, the revenue for at least AYs 2009-10, 2010-11 and 2013-14 lodged its claims with the Resolution Professional (in the prescribed form) between September 2017 and October 2017. The issuance of demand notice is a process provided under 1961 Act to recover amounts which are due and payable by an assessee. The demand notice is backed by an assessment order, which could be the original assessment order or an order modified by an appellate authority.

25. As regards AY 2001-02, the failure on the part of the revenue to lodge a claim within the timeframe prescribed in the public announcement cannot result in placing it on a better footing, when compared to the situation obtaining *vis-à-vis* AYs 2009-10, 2010-11 and 2013-14.

25.1 The same position will obtain *vis-à-vis* recovery of penalty, as concededly, the revenue failed to lodge a claim with the Resolution Professional within the prescribed timeframe.

26. Therefore, the facts on record, in our opinion, not only disclose that the revenue had knowledge of the CIRP, but that it took steps to lodge its claims with regard to three out of the four AYs, on the footing that the amounts reflected in the assessment order were due and payable by BSL. Insofar as AY 2001-02 is concerned, the revenue did not lodge any claim before the RP was approved. The demand *qua* AY 2001-02 (along with the penalty imposed *qua* all four relevant AYs) was communicated as an additional claim on 20.09.2018, only after the RP was approved on

15.05.2018. In the ordinary course, the claim would get extinguished under the provisions of the 2016 Code, as the approved RP obviously made no reference to it. [See ***Ruchi Soya Industries Ltd. v. Union of India & Ors.***[1]] However, as noted above, an appeal on merits *qua* this AY is pending adjudication in the Supreme Court.

27. Notwithstanding the aforesaid argument advanced on behalf of the revenue, we are of the opinion that dues payable to creditors, including statutory creditors, for the periods which precede the date when the RP is approved, can only be paid as per the terms contained in the RP.

27.1 In this regard, the following clauses of the approved RP are relevant:

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[1] "We find that the present appeals are squarely covered by the law laid down by this Court in the case of ***Ghanashyam Mishra*** (supra). It will be relevant to refer to Paragraph 102 of the said judgment which reads as under:

> "102. In the result, we answer the questions framed by us as under:
> 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 [the]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 re-spect to a claim, which is not part of the resolution plan.
> 102.2. The 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 the I&B Code has come into effect.
> 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."

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.

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."

"***8.2.6 Treatment of claims in respect of contravention of Applicable Laws (including Taxes)***

All claims that may be made or arising against the Company in relation to any payments required to be made by the Company under Applicable law (including taxes), or in relation to any breach, contravention or non-compliance of any applicable Law (whether or not such claim was notified to or claimed against the Company at such time, and whether or not such Governmental authority was aware of such claim at such time), in relation to the period prior to the Effective Date, including, without limitation, in respect of the Applicable Laws, matters and proceedings set out in Annexure 12, is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore the foil amount of such claims shall be deemed to be owed and due as of the Insolvency Commencement date, the Liquidation Value of which is NIL and therefore no amount is payable in relation thereto. Further, the directors, key managerial personnel and officers of the Company nominated and/or appointed by the Resolution Applicant on the Closing date shall not incur any Liability (whether civil or criminal) for such breach, contravention or non-compliance of Applicable Law by the Company in relation to the period prior to the Effective Date.

xxx xxx xxx

8.6.10 Effect on Operational Creditors and other Creditors •••.

..... Upon approval of the plan by the Adjudicating Authority:-

i. Except to the Operational Creditors settlement amount proposed to be paid (without an obligation to pay) payable to the relevant operational creditors in accordance with the terms of Section 8.2.2, the company shall have no liability towards any Operational Creditors and other Creditors with regard to any claims (as defined under the IBC) relating in any manner to the period prior to the effective date (whether under Annexure 8,9,10,11,12 or otherwise). Any such liability shall be deemed to be owed and due as of Insolvency commencement date. The Liquidation Value of which is NIL and therefore, no amount is payable in relation thereto. All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged

and settled with there being no further claims whatsoever and all forms of security created or suffered to exist, or rights to create such a security to secure any obligation towards the Operational Creditors and other Creditors (whether by way of guarantee, bank guarantee, Letters of Credit or otherwise) shall immediately irrevocable and unconditionally stand released and discharged, and the Operational Creditors and other Creditors shall waive all rights to invoke or enforce the same. In accordance with the foregoing, all claims (whether final or contingent, whether disputed or undisputed, and whether or not notified to or claimed against the Company) of all Government authorities (including and in relation to taxes and all other dues and statutory payments to any Governmental authorities relating to the period prior to the Effective Date shall stand fully and finally discharged and settled.

ii. Any and all legal proceedings (including any notice, show cause, adjudication proceedings, assessment proceedings, regulatory orders, etc.) initiated before any forum by or on behalf of any Operational Creditor (whether under Annexure 8,9,10,11,12 or otherwise and any Governmental authorities) shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/or extinguished and the Operational Creditors and other Creditors shall take all necessary steps to ensure the same ...

iii. All claims that may be made against the Company in relation to any payments required to be made by the Company under the Applicable Law or in relation to any breach, contravention or non-compliance of any Applicable Law (whether or not such claim was notified to or claimed against the Company at such time, and whether or not such Governmental Authority was aware of such claim at such time), shall be deemed to be owed and due as of the Insolvency Commencement Date shall immediately, irrevocably and unconditionally stand abated, settled and/or extinguished. No Governmental authority shall have any further rights or claims against the Company, in respect of the period prior to the Effective date and or in respect of the amounts written off.

8.6.11 Failure to submit Claims or Rejected Claims

i. The Resolution professional had issued a public notice

dated July 26, 2017 in accordance with the IBC, inviting all creditors of the company to submit their proof of claims to the resolution professional on or prior to august 4 2017. The Information memorandum contains details of the claims made by all the creditors of the company including financial creditors and operational creditors which have been admitted by the resolution professional. Further under CIRP regulations all creditors are required to submit their proof of claim prior to the approval of the plan by the COC. Tata Steel assumes that all persons that have nay claims against the company (including operational creditors, financial creditors, and other creditors, governmental authorities, persons who have paid any advances to the company against supply of goods or services by the company and persons in respect of whom credit balances were written back by the company in the year ended March 31, 2016, March 31 2017, and March 31, 2018) have all filed their claims and all verifiable claims have been admitted by the resolution professional and are disclosed in the information memorandum.

ii. In the event any person that has any claims against the company (including operational creditors, financial creditors, and other creditors, governmental authorities, or otherwise) has not submitted its claims (whether or not it was aware of such claims at such time, or if the claims file by any person has been rejected by the resolution professional then : (i) all such obligations claims and liabilities of the company (whether final or contingent, whether disputed or undisputed and whether or not notified to or claimed against the company) (ii) all outstanding disputes or legal proceedings in respect of such claims and all rights or claims of such persons against the company; in each case, relating to the period prior to the effective date shall immediately irrevocably and unconditionally stand extinguished and waived on the effective date and the company shall have no liabilities in respect of such claims."

27.2 In cases where no provision is made for claims lodged on behalf of the creditors, or there is failure to lodge a claim with the Resolution Professional, all such claims stand extinguished. This position in law obtains

because of the provisions of Section 31 of the 2016 Code, which, *inter alia*, stipulates that once the RP is approved, it shall be binding on the corporate debtor and its employees, members, and creditors which includes the Central Government, State Government, Local Authority arising under any law for the time being in force, and also on authorities to whom statutory dues are owed. Furthermore, the provision also stipulates that the approved plan will be binding on guarantors and other stakeholders involved in forging the same.

28. Therefore, the submission advanced on behalf of the revenue that it could continue with the assessment/reassessment process concerning the AYs in issue is entirely untenable. A successful applicant whose RP has been approved should not be put in a position where it is called upon to liquidate dues of creditors, including statutory creditors, which were not embedded in the RP. A successful applicant is, in law, provided with a "clean slate"; therefore, dues for the period prior to the date when the RP was approved cannot be recovered. The courts have recognized this principle in more than one case. The observations[2] by it in ***Ghanshyam Mishra***, being apposite, are extracted hereafter:

> *"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 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 re-spect to a claim, which is not part of the resolution plan.*

[2] made by the Supreme Court in ***Ruchi Soya Industries Ltd. v. UOI***, which has affirmed the view taken in ***Ghanshyam Mishra***

(ii) The 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 the 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 to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

29. This brings us to the next issue, i.e., whether the provisions of the 2016 Code would override the provisions of the 1961 Act, where inconsistency is found between the two statutes.

29.1 The best clue with regard to the aforesaid issue is contained in the statement of objects and reasons, the preamble and the provisions of Section 238 of the 2016 Code.

29.2 *Inter alia*, the statement of objects and reasons indicates that the 2016 Code was enacted to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner. The goal was to maximize the value of assets, promote entrepreneurship, make available credit facilities, and balance the interests of all stakeholders, which included the alteration of priority of payments to be made against government dues. With this object in mind, the 2016 Code sought to make amendments to various statutes, including the 1961 Act.

29.3 The preamble, in no uncertain terms, reflects this ethos. Therefore, when one examines the provisions of Section 238 of the 2016 Code, the underlying purpose of the provision comes through. Section 238 clearly states without any ambiguity that the provisions of the 2016 Code "shall" have effect, notwithstanding anything inconsistent contained in any other

law for the time being in force, or any instrument having effect under any such law. Thus, where matters covered by the 2016 Code are concerned [including insolvency resolution of corporate persons] if provisions contained therein are inconsistent with other statutes, including the 1961 Act, it shall override such laws. If such an approach is not adopted, it will undermine the entire object and purpose with which the Legislature enacted the 2016 Code. The Finance Minister's speech made in Rajya Sabha on 29.07.2019, which finds reference in paragraph 72 of ***Ghanshyam Mishra,*** bolsters this point of view.

> ***"72.*** *In the Rajya Sabha debates, on 29.7.2019, when the Bill for amending I&B Code came up for discussion, there were certain issues raised by certain Members. While replying to the issues raised by certain Members, the Hon'ble Finance Minister stated thus:*
>
> > *"IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC. [...]*
> > *There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would be proceeded against individuals and not company. There will be no criminal proceedings against successful resolution applicant. There will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the hon. Members to recognize this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt*

with as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear……..

(emphasis supplied)"

30. The other objection articulated on behalf of the revenue was that TSL could take recourse to an alternate remedy, as provided under the 1961 Act and Rules framed thereunder. It is well-established that courts relegate litigants to an alternate remedy, which is efficacious, where it is found necessary, but that does not oust the jurisdiction of a constitutional court exercising jurisdiction under Article 226. Such an approach premises on self-restraint rather than an ouster of jurisdiction. This is the principle of convenience and policy, which has at least three exceptions: (i) where the petition is filed to enforce fundamental rights; (ii) in cases where principles of natural justice are violated; (iii) where the impugned order or proceedings are wholly without jurisdiction, or the vires of a statute are assailed. [See State of U.P. v Mohd. Noor AIR 1958 SC 86; ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.*** (1995 8 SCC 1]

31. We may note that in Ghanshyam Mishra's case, the Supreme Court was dealing with a bunch of cases, including a civil appeal preferred against the judgment of the Allahabad High Court dated 06.07.2020, which was dismissed on the ground that the petitioner could take recourse to an alternate remedy. The High Court had ruled that qua the issue involving the UP Value Added Tax, the writ petitioner/appellant could take recourse to a statutory second appeal for redressal of its grievances. The Supreme Court reversed the judgment of the Allahabad High Court on the ground that since the subject matter of the proceedings related to claims made by the VAT authorities before the approval of the plan, no purpose would be served in

relegating the writ petitioner/appellant to an alternative remedy. The Court made a specific observation which, in our view, applies to the instant cases as well: "A party cannot be made to run from one forum to another forum in respect of the proceedings and the claims, which are not permissible in law."

Conclusion

32. Thus, for the foregoing reasons, the impugned notice and order dated 28.08.2018 and 17.10.2018, respectively, are unsustainable in law and, hence, cannot be enforced.

32.1 The only caveat that we wish to add is that as regards recoveries sought to be made by the revenue *vis-à-vis* AY 2001-02, the parties will have to abide by the final decision that would be rendered in SLP No.849-850/2018.

33. The writ petition is disposed of in the aforesaid terms.

34. Parties will bear their respective costs.

35. The petitioner is directed to file an amended memo of parties for good order and record.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

OCTOBER 31, 2023/aj