

BEFORE THE DIVISION BENCH: ORISSA SALES TAX TRIBUNAL, CUTTACK

S.A. No.30(C) & 31(C) of 2021-22

(Arising out of the order of order of the Addl. Commissioner of Sales Tax, Territorial Range, Jajpur, Jajpur Road in First Appeal Case No. AA 1045KJB (C) 20-21 and AA 1046 KJB (C) 20-21 disposed of on 27.04.2021.)

Present :- Shri. S.K. Rout, & Shri S. Mishra,
2nd Judicial Member Accounts Member-II.

M/s Sree Metaliks Ltd
SML House, Main Road, Barbil,
Keonjhar. Appellant

- Versus-

State of Orissa, represented by the
Commissioner of Sales Tax, Orissa. Respondent

For the Appellant : Mr. Sidhartha Ray, Advocate
: Mr. K.K. Sahoo, Advocate
For the Respondent : Mr. Deba Behura, S.C. (C.T.)
: Mr. S.K. Pradhan, Addl. S.C. (C.T.)

Date of Hearing :13.05.2022 * Date of Order: 21.05.2022**

ORDER

Since parties are same and the question of law with facts and circumstances of the cases are almost identical in nature, the aforesaid appeals are hereby disposed of in a combined manner.

S.A. No. 30(C) of 2021-22

Present appeal U/s.78(1) of the Odisha Value Added Act, 1999 (in short, 'OVAT Act') read with Rule 22 of the CST(O) Rules is at the behest of the dealer-assessee

challenging the impugned order dtd.27.04.2021 promulgated in appeal case No. AA 1045 KJB (C) 20-21 by the Additional Commissioner of Sales Tax, Territorial Range, Jajpur, Jajpur Road (in short, ld. FAA) who set aside the demand of Rs.4,68,41,709.00 raised by the Assessing Authority, Barbil Circle, Barbil (in short, LAO) in assessment order passed on 30.03.2017 framed U/r.12(1) of the CST(O) Rules for the period from 01.04.2011 to 31.03.2012.

S.A. No. 31(C) of 2021-22

Present appeal U/s.78(1) of the Odisha Value Added Act, 1999 (in short, 'OVAT Act') read with Rule 22 of the CST(O) Rules is at the behest of the dealer-assessee challenging the impugned order dtd.27.04.2021 promulgated in appeal case No. AA 1046 KJB (C) 20-21 by the Additional Commissioner of Sales Tax, Territorial Range, Jajpur, Jajpur Road (in short, ld. FAA) who set aside the demand of Rs.1,00,48,851.00 raised by the Assessing Authority, Barbil Circle, Barbil (in short, LAO) in assessment order passed on 11.01.2018 framed U/r.12(1) of the CST(O) Rules for the period from 01.04.2012 to 31.03.2013.

2. Being aggrieved by the orders passed by the ld. FAA who set-aside /remitted the matter back to the LAO, Barbil Circle, Barbil for fresh adjudication on the following points

that the Declaration Forms which has been produced before this forum to be further verified and also to take into account the facts regarding filing of the claim with NCLT, the Appellant has filed the aforesaid appeals before this Tribunal mainly on the following grounds:

“a. For that the Id. FAA acted illegally in remanding the matter to the LAO, particularly when all the materials were available on record. Therefore the orders of remanding, passed by the Id. FAA in first appeal case No.AA-1045/KJB(C)/20-21 and No.AA-1046/KJB(C)/20-21 are illegal and are liable to be annulled.

b. For that the Id. FAA lost sight of the fact that a corporate insolvency resolution was initiated against the appellant by order dt.30.01.2017 by National Company Law Tribunal, Kolkata Bench, Kolkata who admitted the application and appointed one Vineet Kothari as Interim Resolute Professional and issued a Moratorium U/s.15 of the Insolvency and Bankruptcy Code 2016.

c. For that the IRP who invited public claim in daily News Paper dt.06.02.2017 to which the Sales Tax Department didn't submit their claim as a consequence of which it was not found in the Resolution Process. Therefore, after the transfer of management, the amount created by virtue of the assessment

completed under the CST Act for the period 01.04.2011 to 31.03.2012 & 2012-13 cannot be saddled upon the new management as the management has to start in a new slate.

d. For that the institution and continuation of the assessment proceeding under the CST Act for the impugned periods during the time when the moratorium was in force, is void ab initio and is liable to be annulled.

e. For that the Id. FAA having lost sight of the dictum of the Supreme Court in the case of P. Mohanraj and Others in Civil Appeal No.10355 of 2018 and in the case of Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited delivered in Civil Appeal No.8129 of 2019 while passing the orders of remand, therefore the orders of remand are illegal and are liable to be annulled.

f. For that the assessment for the impugned periods being in violation in the memorandum issued u/s.14 of IBC, are illegal and void ab initio.

g. For that the appellate authority under the OVAT Act which mutatis mutandis apply to that of the CST Act, has given wide power to the appellate authority to decide the issue in facts as well as any question of law. For the sake of convenience, Section 77 of the OVAT Act dealing with the power of the appellate authority is quoted below:-

Section 77 of OVAT Act.

(1) Any dealer aggrieved by an order passed under section 34,40,42,45,(49) or 50 only prefer an appeal to such authority as may be prescribed.

Xx xx xx xx

(7) Disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary.

(a) Confirm, reduce or annul the assessment of tax, on the imposition of interest or levy of penalty, i any, or;

(b) enhance the assessment including any part thereof whether or not such part is the subject matter in the appeal, or

(c) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed.

Rule 86(1) of the OVAT Rules,

(1) Any dealer aggrieved by an order passed under Section 34,40,42,43,44,45,49 or 52 may prefer appeal within thirty days from the date of receipt of such order before-
Rule 89(2) of the OVAT Rules,

“(2) The appellate authority may, before disposing of any appeal, make such further enquiry as it thinks fit or cause further enquiry to be made by the Assistant Sales Tax Officer or the Sales Tax Officer or Assistant Commissioner (or Deputy Commissioner Joint Commissioner of Sales Tax) as the case may be;”

A bar reading of the aforesaid section and the corresponding rule i.e. Rule 86 of the OVAT Rules makes it clear that the appellate authority is competent to decide the question of law, which does not require any further investigation.”

- h. For that there was nothing for further investigation as all the materials i.e. the order of NCLT, Public claim, Judgment of NCLT dt.07.11.2017 and Judgment of Appellate Authority i.e. NCLT was before the Id FAA and he should have annulled the assessment instead of remanding the matter to the Assessing Officer to re-do the assessment.
1. For that the law is well settled by our Hon’ble High Court in the case of Sikha “O” Anusanadhan Vs CIT reported in (2011) 336 ITR page 112 in which it is held that “law is well settled that once the materials are available on record, the appellate court should have disposed of the case on

merits taking those materials into consideration and there is no need to direct remand.”

- i. Therefore the ld. FAA acted illegally in remanding the matter to the Assessing Officer, particularly when no further investigation was required and it involves the question of law i.e.
 - ii. During the time of moratorium whether the assessment proceeding can be instituted and continued?
 - iii. The State Government being the operational creditor whether without filing its claim which does not form part of resolution process can be saddled upon the appellant which is a new management and has been approved by the Committee of Creditors?
- i. That U/s.30 of IBC, the judgment of NCLT is binding on the State Government, Central Government and the local authority, the revenue by bi-passing such provision cannot saddle the appellant with tax, which was raised under the CST Act for the impugned periods.
 - j. For that the orders of remand being unwarranted and in violation of the statutory provisions, the orders of remand as well as the assessment orders are liable to be annulled.
 - k. For that Section 238 of IBC which starts with word “notwithstanding” has got a overriding effect over the CST

Act, therefore, the first appellate authority acted illegally in overlooking the provisions as contained in section 238 of the IBC.

“Sec. **238**. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

1. For that in view of the above the orders of the first appellate authority as well as the assessment orders are illegal, void ab-initio and are liable to be annulled in the interest of justice.”

1. The Appellant has two units one is at Loidapada and another in Anara in the district of Keonjhar for manufacturing of Sponge Iron, Iron Billets and Iron Pellets etc and effects sales in both inter-state and intra-state. The Appellant is registered under the OVAT Act as well as under the CST Act having TIN 2188140377.

2. Brief facts of the case are:-

2.1 The Appellant became sick and for financial reconstruction approached the BIFR and the application was registered by the BIFR on 18.11.2014.

5.2 The Adjudicating Authority i.e. National Company Law Tribunal, Kolkata Bench, Kolkata admitted the

application on 30.01.2017 and appointed one Interim Resolute Professional and also declared moratorium.

5.3 During the period of Corporate Insolvency Resolution Process (CIRP) a declaration of moratorium u/s 14 of IBC was issued and the Sales Tax Officer, Barbil Circle, Barbil proceeded to complete the provisional assessment orders by raising demand of Rs.4,68,41,709.00 and Rs.1,00,48,851.00 for the period 2011-12 and 2012-13 respectively, which were communicated to the Appellant after more than two and half years from the date of completion of the order.

5.4 Being aggrieved of the orders of the provisional assessment passed u/r 12(1) of the CST (O) Rules, 1957, the Appellant filed Writ Petitions before the Hon'ble High Court of Orissa which were registered as W.P(C) 4952 of 2018 and W.P(C) No.20755/ 2020. The Hon'ble High Court while disposing of the Writ Petition directed the Appellant to file appeal and the Appellate Authority will dispose of the appeals in accordance with law. In compliance to the direction of the Hon'ble High Court, the Appellant filed appeal before the Additional Commissioner of Sales Tax, Territorial Range, Jajpur, Jajpur Road which were

registered as First Appeal No.AA.1045KJB(C)/20-21 and Appeal No.AA.1046KJB(C)/20-21 respectively.

5.6 The First Appellate Authority on 27.04.2021 remitted/set aside the matter back to the Assessing Officer, Barbil Circle, Barbil to re-do the assessment afresh with particular referrals to the Declaration Forms which has been produced before this Forum and also to take into account the facts regarding filing of the claim with NCLT.

5.7 Being aggrieved of the order of the First Appellate Authority the appellant challenged the same by way of filing the aforesaid Second Appeals.

6. Contentions by the appellant:

6.1 That in spite of the declaration of moratorium, the Sales Tax Officer, Barbil Circle, Barbil, proceeded for provisional assessment u/r 12(1) of the CST (O) Rules, for the period 01.04.2011 to 31.03.2012 and 01.04.2012 to 31.03.2013, which is illegal in view of the mandate provided u/s 14 of the IBC and judgement delivered by the Hon'ble Supreme Court in the case of P. Mohanraj and Ors Vs. M/s Shah Brothers Ispat Pvt Ltd, in Civil Appeal No.10355 of 2018(SC).

6.2 The Counsel for the Appellant vehemently urged that once the moratorium has been declared u/s 14 of the

IBC, the LAO ought not to have proceeded to complete the provisional assessment for the period 01.04.2011 to 31.03.2012 and 01.04.2012 to 31.03.2013 under rule 12(1) of the CST (O) Rules.

6.3 The Learned Counsel for the Appellant has drawn our attention to Section 14 of the Insolvency and Bankruptcy Code, 2016 and also the decision of the Hon'ble Supreme Court in the case of P. Mohanraj and Others Vs. M/s Saha Brothers Ispat Pvt Ltd delivered in Civil Appeal No.10355/2018(SC).

6.4 The Learned Counsel for the Appellant filed a compilation of decisions comprising of judgment of the Hon'ble Supreme Court and also the judgment passed in W.P(C) No.8259/2009 of the Hon'ble High Court of Orissa, disposed of on 21.06.2021.

6.5 It is the contention of the Learned Counsel for the Appellant that after publication inviting claim as per Annexure-3 at Page 34, in so far as Second Appeal No.30(C) & 31(C)/2020-21 are concerned, no such claim by the Sales Tax Department has been submitted to the Interim Resolute Professional on whom the management was vested. On the date of such application, the Corporate Insolvency Resolution

Process was admitted. He has also drawn our attention to section 17 of the IBC, which is quoted below-

Section 17

17.Management of affairs of corporate debtor by interim resolution professional:

(1) From the date of appointment of the interim resolution professional-

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional.

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.

(d) the financial institution maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all informations relating to the corporate debtor available with them to the interim resolution professional.”

6.6 The Learned Counsel for the Appellant argued that the claim of the Department should have been filed in the proper Format as prescribed in Regulation-7 of Chapter-IV of the IBC, 2016 and in absence of which the revenue cannot press upon for recovery of the demand.

6.7 The learned Counsel has also brought to our notice, as to how a claim is to be submitted prescribed under Regulation- 7 and in the Form as prescribed in Form-B of the Schedule. The provision regarding proof of claim under Chapter-IV are extracted below-

‘Regulation-7. Claims by operational creditors-(1) A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit proof of claim to the interim resolution professional in person by post or by electronic means in Form B of the Schedule

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the Committee.

(2) The existence of debt due to the operational creditor under this Regulation may be proved on the basis of .

(a) the records available with an information utility, if any; or

(b) other relevant documents, including-

- (i) a contract for the supply of goods and services with corporate debtor;
- (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;
- (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or
- (iv) financial accounts.”

Form -B

Proof of claim by Operational Creditors Except Workmen and Employees

(Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

To

The Interim Resolution Professional/Resolution Professional

(Name of the Insolvency Resolution Professional/Resolution Professional)

(Address as set out in public announcement)

From:

(Name and address of the operational creditor)

Subject: Submission of proof of claim.

Madam/Sir,

(Name of the operational creditor), hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of (Name of corporate debtor). The details for the same are set out below

Particulars

1. Name of operational creditor
2. Identification number of operational creditor
(if an incorporated body provide identification Number and proof of incorporation. If a Partnership or individual provide Identification records of all the partners Or the individual).
3. Address and email address of operational Creditor for correspondence.
4. Total amount of claim (Including Any interest as at the insolvency Commencement date)

5. Details of documents by reference to which

The debt can be substantiated.

6. Details of any dispute as well as the record of

Pendency or order of suit or arbitration

Proceedings.

7. Details of how and when debt incurred.

8. Details of any mutual credit, mutual debts, or

Other mutual dealings between the corporate

Debtor and the creditor which may be set-off

Against the claim.

9. Details of any retention of title arrangements

In respect of goods or properties to which the

Claim refers.

10. Details of the bank account to which the

Amount of the claim or any part thereof can be

Transferred pursuant to a resolution plan.

11. List of documents attached to this proof of

Claim in order to prove the existence and

Non-payment of claim due to the operational

Creditor/

Signature of operational creditor or person authorized to act on his behalf.

(Please enclose the authority if this is being submitted on behalf of an operational creditor)

Name in BLOCK LETTERS

Position with or in relation to creditor

Address of person signing

PAN number, passport, AADHAAR Card or the Identity card issued by the Election Commission of India.

AFFIDAVIT

I, (Name of deponent), currently residing at (insert address), do solemnly affirm and state as follows:

1. (Name of corporate debtor), the corporate debtor was, at the insolvency commencement date, being the _____ day of _____ 20____, justly and truly indebted to me in the sum of Rs.(insert amount of claim).

2. In respect of my claim of the said wsum or any part thereof, I have relied on the documents specified below:

(Please list the documents relied on as evidence of claim).

3. The said documents are true, valid and genuine to the best of my knowledge, information and belief.

4. In respect of the said sum or any part thereof, I have not nor has any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following :

(Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim.)

Solemnly, affirmed at (insert place) on _____ day, the ____ day of ____ 20____.

Before me,

Notary/ Oath Commissioner

Deponent's Signature

VERIFICATION

I, the Deponent hereinabove, do hereby verify and affirm that the contents of paragraph__ to _____ of this affidavit are true and correct to my knowledge and belief and no material facts have been concealed therefrom.

Verified at _____ on this _____ day of _____ 201__

Deponent's Signature.”

6.8 It is the contention of the Learned Counsel for the Appellant that once the claim has not been submitted neither before the Resolute Professional nor before the NCLT u/s 60 of the IBC, the revenue now can not press upon for recovery of the demand.

6.9 Pursuant to the provisional assessment for the period 2011-12 and 2012-13 passed under the CST(O) rules, are totally unsustainable and liable to be annulled. For that reason the Learned Counsel for the appellant has drawn our attention to section 60 of IBC, which says like this.

Section 60 (5) of IBC-Adjudicating Authority for corporate persons.

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company law Tribunal shall have jurisdiction to entertain or dispose of....”

6.10 The learned Counsel for the Appellant has placed reliance on the judgement of the Hon’ble High Court of Orissa passed in W.P(C) No.8259/2019 in the case of the Appellant who challenged the demand raised by the Irrigation Department and the Hon’ble High Court allowed the writ Petition on the ground that the claim of the Irrigation Department having not been made before the Interim Resolute Professional or before the NCLT

in the proper format and therefore the claim prior to the judgement of the NCLT is not enforceable. The Learned Counsel for the Appellant placed reliance on the order passed by the Hon'ble High Court of Orissa passed in W.P(C) No.8259/2019 in the case of the Appellant. The relevant portion of the order are quoted below

“8. The settled legal position is that once a resolution plan is approved by the CoC and meets the requirements of Section 30 (2) of the IBC, it is binding on all creditors, guarantors, employees and other stake holders. From the point of view of the company that is undergoing the reconstruction, it cannot after the resolution plan is approved, be faced with fresh claims pertaining to the very period for which the plan has been approved. This has been explained by the Supreme Court in *The Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta* 2019 SCC On Line SC 1478 as under:

“67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution Applicant cannot suddenly be faced with

“undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh state, as has been pointed out by the hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.”

9. The above observations were reiterated in a recent decision of the Hon'ble Supreme Court dated 13th April, 2021 passed in Civil Appeal No. 8129 of 2019 (Ghanashyam Mishra and Sons Pvt. Ltd v. Edelweiss Asset Reconstruction Company Ltd.) and held as under:

"111. NCLAT has categorically found, that no ground as is available under sub-section (3) of Section 61 of I & B Code has been made out and has also categorically found, that the resolution plan submitted by GMSPL was a better offer than the other two resolution applicants, including EARC and that the Adjudicating Authority has rightly approved the resolution plan

of GMSPL. After coming to such finding, the only option available with NCLAT was to dismiss the appeals. In our view, the observations made in the aforesaid paragraphs, if permitted to remain, would totally frustrate the object of I&B Code of revival of a Corporate Debtor and to resurrect it as a going concern. As held by this Court, the successful resolution applicant cannot be flung with surprise claims which are not part of the resolution plan."

10. In the present case, once the resolution plan was approved by the NCLT, and affirmed by the NCLT in appeal, it was not open to the O.P No.2 which in fact participated in the resolution plan by submitting a claim, to again raise a demand for the very period covered by the resolution plan. In other words, no claim for the period between December 2009 up to 7th November 2017, the date of approval of the resolution plan could have been raised by Opposite Party No.2. Such demands to the extent they cover the period up to 7th November, 2017 are plainly unsustainable in law. "

6.11 He further placed reliance on the judgement of the Hon'ble Supreme Court delivered in the case of Ghanshyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited

through the Director and Ors- delivered in Civil Appeal No.8129 of 2019 by the Hon'ble Supreme Court of India.

In the aforesaid case in Para 60, 61 and 62, the Hon'ble Apex Court observed-

“60. Perusal of Section 29 of the I &B Code read with Regulation 36 of the Regulations would reveal, that it requires RP to prepare an information memorandum containing various details of the Corporate Debtor so that the resolution appellant submitting a plan is aware of the assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons...

61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon the satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub

section (2) of section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution appellant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

62. That aspect has been aptly explained by this Court as the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).

“107. For the same reason, the impugned NCLAT Judgment (Standard Chartered Bank V. Satish Kumar Gupta, 2019 SCC Online NCLAT 388) in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code. Also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution

applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does in a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

6.10 According to the learned Counsel for the Appellant that the claim is not submitted before the Interim Resolute Professional, he cannot put it in the Information Memorandum and submit it to the Resolute Applicant who will be not in a position to know his actual liability to liquidate.

6.11 Lastly, it was contended by the Learned Counsel for the Appellant that all the materials having been placed before the First Appellate Authority i.e. Addl. Commissioner of Sales Tax, Territorial Range, Jajpur, Jajpur Road, who ought not to have set aside/ remitted back to the learned Assessing Officer for fresh assessment with particular reference to the declaration forms which has been produced before that forum and also to take into account the facts regarding filing of the claim with NCLT. In this regard, he has relied on the Judgement of the Hon'ble High Court of Orissa delivered in the case of Sikhsa 'O' Anusandhan Vs. Commissioner of Income Tax and Others passed in ITA Nos,71,72,73,74,75,76 and 77 of 2009 reported in (2011) 336 ITR

Page 112 (Orissa High Court), wherein the Hon'ble High Court held-

“Law is well settled that once the materials are available on record, the appellate court should have disposed of the case on merit taking those materials into consideration and there is no need to direct remand.”

7. **Submission of the Revenue:**

7.1 The standing counsel representing the State submitted that the First Appellate Authority in remitting/setting aside the matter back to the Assessing Officer has done rightly as per the order of the Hon'ble High Court passed in W.P(C) No.4952/2018 and W.P(C) No.20755 of 2020, where the Hon'ble High Court have observed that the Appeal is to be disposed of in accordance with law. He further submitted that the Department was not aware of the paper publication inviting claim dt.6th Feb 2017.

7.2 On our query as to how a delay of two and half years occurred for service of the provisional assessment order, the Learned Standing Counsel was unable to give satisfactory reply and further no affidavit has been filed in support of the delay caused in communicating the orders of provisional assessment passed for the period 2011-12 and 2012-13.

7.3 This Division Bench of the Tribunal is at all not satisfied about the delay in communicating the order passed in the provisional assessment and also the demand raised therein.

8. Statutory Analysis:

8.1 Insolvency and Bankruptcy Code was enacted in the year 2016 and has gone amendment time to time. The object of the Act is for the revival of the sick units, so that they can start afresh in clean slate without any hindrance.

8.2 That, the dominant object of the I & B Code is to see to it, that an attempt has to be made to revive the Corporate Debtor and make it a running concern. For that, a resolution applicant has to prepare a resolution plan on the basis of the Information Memorandum. The Information Memorandum, which is required to be prepared in accordance with Section 29 of I & B Code along with Regulation 36 of the Regulations, is required to contain various details, which have been gathered by RP after receipt of various claims in response to the statutorily mandated public notice. The resolution plan is required to provide for the payment of insolvency resolution process costs, management of the affairs of the Corporate Debtor after approval of the resolution plan; the implementation and supervision of the resolution plan. It is only after the Adjudicating Authority satisfies itself, that the plan as approved by CoC with the requisite voting share of

financial creditors meets the requirement as referred to in sub-section (2) of Section 30, grants its approval to it. It is only thereafter, that the said plan is binding on the Corporate Debtor as well as its employees, members, creditors, guarantors and other stake-holders involved in the resolution Plan. The moratorium order passed by the Adjudicating Authority approves the resolution plan. The scheme of I &B Code therefore is to make an attempt, by divesting the erstwhile management of its power and vesting it in a professional agency to continue the business of the Corporate Debtor as a going concern until a resolution plan is drawn up. “

8.3 Under the mechanism of IBC, Corporate Debtor has been defined under sub section (8) of Section 3 in the following manner-

(8) “Corporate Debtor” means a corporate person who owes a debt to any person.”

8.4 “Debt” has been defined under sub section 11 to section 3 of the IBC.”.

(11) “Debt” means a liability of obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

8.4 “Operational Debt as has been defined under sub section (21) to section 5 of IBC-

(21)“Operational debt”- means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.”

8.5 The adjudicating authority has been defined under sub section (1) to Section -5-“

(1) “Adjudicating Authority for the purpose of this part means National Company Law Tribunal constituted u/s 408 of the Companies Act,2013 (18 of 2013).

8.6 Corporate Insolvency Resolution Process can be initiated by any financial creditor under section 7 of IBC. Once the adjudicating authority i.e. NCLT is satisfied that the Corporate Debtor has to pay his debt, the NCLT may admit the application and declare moratorium, which is defined under section 14 of the IBC and the same is defined in the following manner-

Section 14 of the IBC

(a) The Institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein,

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate

8.7 Once the Corporate Insolvency Resolution process has been initiated the same will be publicly announced inviting claim u/s 15(1) of the IBC and also one Interim Resolute Professional shall be appointed on whom the management of the Company is vested as per section 17 of the IBC. The Duty of the IRP has been defined under section 18 of the IBC.

8.8 Once a Moratorium was issued under section 14 of the IBC, it is clear that there cannot be any institution, continuation of suits or proceedings and the Hon'ble Supreme Court in the case of P. Mohanraj & Others Vs. M/s Shah Brothers Ispat Pvt Ltd-delivered in Civil Appeal No.10355 of 2018 (SC) also held that once the moratorium is declared, even the criminal proceedings cannot be instituted or continued against the corporate debtor.

8.9 After publication of inviting claim, the claimant has to file his claim in the prescribed manner as per Insolvency Resolution Regulations, 2016 to the Interim Resolute Professional in the prescribed format.

8.10 It is relevant to extract of Section 31(1) of IBC

Approval of Resolution Plan:

(1) If the adjudicating authority is satisfied that the resolution plan as approved by the Committee of creditors under sub section (4) of Section meets the requirements as referred to in sub section (2) of Section 30 it shall by order approved the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors (including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of the dues arising under any law for the time being in force such as authorities to whom statutory dues are owed.) Guarantees and other Stake Holders involved in the resolution plan.

9.Our Analysis

9.1 We find from the record that National Company Law Tribunal, Kolkata Bench, Kolkata had admitted the application filed by SREI Equipments and Finance Ltd on 30.01.2017 and a Moratorium was issued as well as one Binit Kothari was appointed as Interim Resolute Professional.

9.2 We further find from the record that there was a publication inviting claim and some department have participated in the CIRP and have submitted their claim. So, it is undisputed that there was a publication inviting claim in the newspaper on 06.02.2017 and a moratorium was issued on 30.01.2017. In spite of declaration of moratorium of publication to the effect that CIRP proceeding has been initiated against the Appellant Company, it is strange that the Assessing Officer, Barbil, Circle, Barbil still proceeded to continue with the provisional assessment proceeding for the period 2011-12 and 2012-13.

9.3 That, even though the demand was raised against the Corporate Debtor who is the present appellant, the same was never communicated to the Interim Resolution Professional and also before the NCLT who could have easily admitted it under sub section (5) to Section 60 of the IBC, which reads as follows-

Sub section (5) to Section 60 of the IBC

“(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a) any application or proceeding by or against the corporate debtor of corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts , arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this code.”

9.4 We now find it very difficult to accept the argument of the Standing Counsel that the department was not aware of the CIRP against the Appellant who was the Corporate Debtor. Further, our query as to whether any claim was submitted before the Adjudicating Authority who could have easily dealt with under sub section (5) of Section 60 of the IBC.

9.5 The learned Standing Counsel admitted that no such records has been made and on this we find there is force in the arguments of the Learned Counsel of the Appellant and the decision relied upon by him that it was totally illegal on the part of the Assessing Officer to continue the provisional assessment proceeding in spite of the declaration of moratorium and not putting the claim before Interim Resolute Professional nor before the NCLT.

9.6 Law is well settled that in the case of the Committee of Creditors of Essar Steel India Ltd Vs.Satish Kumar Gupta

reported in 2019 SCC Online SC Page 14781 and Ghanshyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss asset Reconstruction Company Limited through the Director and Ors- delivered in Civil Appeal No.8129 of 2019 by the Hon'ble Supreme Court of India, which has also been followed by our own High Court in the case of the Appellant in W.P(C) No. 3259/2019 that once a claim is not given in a proper format as prescribed under the statute, the same can not be acted upon by the claimant or by the State.

9.7 Under Section 238 of the IBC, the said Act has got an overriding effect over other Acts and this has been held in the case Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd reported in 2018 SCC Page 786 and in the case of Duncans Industries Ltd Vs. A.J. Agrochem decided on 04.10.2019 in Civil Appeal No.5120 of 2019 by the Supreme Court.

9.8 It is also well settled that if the law required an act to be done in a particular manner, that has to be done in that manner only or not at all. (referred to the judgment in the compilation in the case of Jindal Stainless Ltd Vs. State of Orissa and Ors decided on 07.08.2012 by the Hon'ble High Court of Orissa in W.P(C) No.15962 of 2010 and in the case of Indian Bank's Association, Bombay and Ors- Vs-Devkala Consultancy Services

and Others- decided on 16.04.2004 in Civil Appeal No.4655 and 5218 of 2000 by the Hon'ble Supreme Court.}

9.9 Now, coming to the second argument of the Learned Standing Counsel, defending the order of the First Appellate Authority that he has done correctly by setting aside/remitting back to the Assessing Officer, we find that such argument has no force because of the fact that when all the materials are placed before the First Appellate Authority, he should have decided that issue which goes to the root of the case and is a jurisdictional issue . The Appellant had relied on the judgment of the Hon'ble High Court of Orissa delivered in the case of Siksha "O" Anusandhan Vs. Commissioner of Income Tax and Others decided in ITA No.71,72,73,74,75,76 and 77 of 2009- Reported in (2011) 336 ITR 112 (Orissa).-

"Law is well settled that once the materials are available on record, the Appellate Court should have disposed of the case on merit taking those materials into consideration and there is no need to direct remand."

10. The Hon'ble High Court while directing the Petitioner to file appeal and further directing the matter to be disposed of in accordance with law, it cannot be said that the matter is to be remitted back to the Assessing Officer by the Appellate Authority instead of deciding himself.

11. Therefore, the objection of the Standing Counsel cannot be accepted and therefore we have to set aside the impugned appeal orders passed by Ld.FAA for the material periods.

12. In the result, the appeals filed by the assessee are allowed and the impugned orders of the Learned FAA for the relevant periods are set aside.

Dictated & Corrected by me.

Sd/-
(Srichandan Mishra)
Accounts Member-II

Sd/-
(Srichandan Mishra)
Accounts Member-II

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member