

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 01.07.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/828/2024 in Company Petition IB/16/2023
NAME OF THE COMPANY	XL Energy Limited
NAME OF THE PETITIONER(S)	Invent Assets Securitization and Reconstruction Pvt Ltd
NAME OF THE RESPONDENT(S)	XL Energy Limited
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/828/2024

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**IA No 828/2024
In CP (IB) No. 16/7/HDB/2023**

U/s 60(5) of Insolvency Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules 2016

In the matter of M/s XL Energy Limited

Between:

**Consortium of MS. Karishma Jain,
M/s. Jupiter City Developers (I) Ltd. &
M/s Adwaita Navigations Private Ltd.
(Successful Resolution Applicant)**

..... Applicant

And

1. Mr. Vijay Pitamber Lulla,

(Resolution Professional of M/s XL Energy Ltd.)
Having Office address at 201, Satchidanand Bldg,
12th Road, Khar West, Mumbai - 400052

2. Income Tax Department

Represented by the Principal CCIT,
Having Office at: CIT-1, 3rd Floor,
Aayakar Bhawan, Basheerbagh,
Hyderabad-500004

..... Respondents

Date of Order: 01.07.2024

Coram:

Hon'ble Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Hon'ble Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels:

For Applicant : M/s Naresh Kumar Sangam, Advocate

For Respondent No.1 : Amir Bavani, Advocate, AB Legal

PER: Rajeev Bharadwaj (Judicial Member)

1. The present application has been filed by the Consortium of M/s Karishma Jain & Ors., the Successful Resolution Applicant (“**SRA/Applicant**”), seeking to declare that the belated claims of Respondent No. 2 are illegal and untenable in the light of the Resolution Plan approved by the Committee of Creditors (CoC). Additionally, the Applicant prays to carry forward losses and concessions in the income tax returns filed by Corporate Debtor (CD) for the AY’s 2016-2017 and 2022-2023.
2. On 27.03.2023, Corporate Insolvency Resolution Process (CIRP) was initiated against the CD. Initially, Mr. Vijay Pitamber Lulla, Respondent No. 1, was appointed as the Interim Resolution Professional (IRP) and subsequently the CoC confirmed IRP as Resolution Professional (RP).
3. **Applicant’s case:**
 - 3.1 Pursuant to the Form G publication dated 09.09.2023, the Applicant submitted its Expression of Interest (EoI) and was also included in the final list of Prospective Resolution Applicants (**PRAs**). The Applicant subsequently submitted its initial Resolution Plan and was invited for negotiations with the CoC members on 29.11.2023. After several discussions and negotiations, the Applicant submitted its final Resolution Plan on 05.12.2023. This plan was put to vote from 22.01.2024 to 19.02.2024 and was approved by the CoC with a majority of 73.68%.

Consequently, Respondent No. 1 filed an Application IA (IBC) (Plan) No.5 of 2024) for approval of the Resolution Plan.

- 3.2 On 08.04.2024, the Respondent No. 1 informed the Applicant through email that the Income Tax Department (“**ITD/Respondent No. 2**”) had belatedly issued Assessment Orders for the years 2016-2017 and 2022-2023, along with Demand Notice and Notice of Penalty dated 21.03.2024, amounting Rs. 3,15,44,29,809/- against the CD (**Annexure 2**). Notably, Respondent No. 2 approached Respondent No. 1 with these claims only on 21.03.2024. Furthermore, as per the Reply Letters from Respondent No. 1 to Respondent No. 2 dated 03.04.2024, the ITD did not file any claims in pursuance of the Public Announcement dated 01.04.2023. Thus, Respondent No. 2 is not listed as one of the CD's creditors on the Insolvency and Bankruptcy Board of India (**IBBI**) web portal. As such, any raising of belated assessment orders, claims and demands cannot be entertained.
- 3.3 Through its Resolution Plan, the Applicant has sought specific reliefs, concessions, and waivers from all claims against the CD, including those from the ITD and liabilities arising under the Income Tax Act, 1961. The Resolution Plan amount is intended to be considered as the full and final settlement of claims, demands, or liabilities owed by the CD.
- 3.4 It is submitted that the Applicant's Resolution Plan includes provisions for reliefs and concessions, ensuring that the CD retains the eligibility to carry forward losses from relevant financial/assessment years. These provisions of Resolution Plan are safeguard against any hindrance or obstruction by Respondent No. 2, considering their belated claims, which are deemed time-barred. However, the belated demand arising from the Assessment Order dated 21.03.2023, pertaining to 2022-23, reflects Respondent No. 2's disallowance of capital losses amounting to Rs. 1,79,51,97,437/-.

- 3.5 This contradicts the clean slate principle, therefore, it is claimed that at this stage when the Resolution Plan is pending for approval by this Authority, the Applicant cannot be burdened with additional liabilities. Such impositions would defeat the inherent aim, intent, and objectives of the IBC.
- 3.6 In support of its contentions, the Applicant has placed reliance on the judgments of Hon'ble NCLAT and Hon'ble Supreme Court in the matters of, *Department of State Tax v. Dar Media Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 73 of 2024]*, *M/s. RPS Infrastructure Ltd. v. Mukul Kumar & Anr. [Civil Appeal No. 5590 of 2021]* and *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019]*.

4. **The Respondent No.1's Case:**

- 4.1 On 24.05.2024, the Respondent no.1 replied to the email of claim submitted by the Respondent No.2 and informed that:

"In reference to the claim submitted by you dated 16.05.2024 please be informed that the Hon'ble NCLT. Hyderabad Bench vide order dated 19.04.2024 approved the resolution plan submitted by Consortium of Karishma Jain and others and it is under implementation. As per the law, the claim has to be submitted within 90 days of commencement of CIRP. Since, the CIRP has been completed with the Resolution plan being approved, the claim of II department cannot be admitted at this stage and the claim stands extinguished in terms of the resolution plan dated 19.04.2024 of NCLT Hyderabad bench."

- 4.2 Once the Adjudicating Authority approves the Resolution Plan, the SRA obtains a clean slate, and thereafter no further claim can be entertained by the Resolution Professional and the Applicant is therefore not obligated to make any payments for past liabilities upon the Resolution Plan's approval, as these have been waived and extinguished. Allowing Respondent No. 2's claim at this late stage would revive unresolved claims against the Applicant

and revert the CIRP progress. Therefore, the submission of claims by Respondent No. 2 becomes irrelevant following the approval of the Resolution Plan by this Authority.

- 4.3 In support of his contentions, the Respondent No.1 has placed reliance on the judgments of Hon'ble Supreme Court in the matters of *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. [(2021) 9 SCC 657]* and *Tata Power Western Odisha Distribution Ltd & Anr. Vs. Jagannath Sponge Pvt Ltd*
5. Despite the service of notice to the Respondent No.2, none appeared on its behalf.
6. Heard both the counsels of Applicant and Respondent No.1 and perused the records.
7. Undisputedly, the CD was admitted into CIRP on 27.03.2023. Subsequently the CoC has approved the Resolution Plan submitted by the Applicant in its 14th CoC meeting held on 19.02.2024 with 73.78% voting share and the same was approved by this Authority on 19.04.2024.
8. It is important to note that the ITD issued Assessment Orders for the assessment years 2016-2017 and 2022-2023, along with a Demand Notice and a Notice of Penalty on 21.03.2024 for a total sum of Rs. 315,44,29,809/- which were evidently issued after the Resolution Plan had been approved by the Committee of Creditors (CoC) and reserved for orders by this Authority.
9. The RP replied to the above notices of the ITD on 03.04.2024 informing about the initiation of CIRP of the CD, approval of Resolution Plan by the CoC and also regarding the application filed before this Authority for the approval of Resolution Plan. It is only on 16.05.2024 the ITD submitted its

claim in Form B vide an email claiming an amount of Rs. 317,05,46,484/- which is after this Authority approved the Resolution Plan.

10. It is now a well settled law that once a Resolution Plan is approved by the CoC no new claims can be entertained and that the SRA shall not be pestered with any previous or belated claims. The same has been held by the Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Limited through Authorized Signatory vs Satish Kumar Gupta (2020) 8 SCC 531*.
11. The Hon'ble Supreme court in the case of *Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd 2021 SCC OnLine SC 313* moved a step ahead and has further clarified 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. 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.
12. It is evident that the ITD filed its claim after the Resolution Plan had been approved by the Committee of Creditors (CoC) and this Authority. Therefore, the claims for the assessment years 2016-2017 and 2022-2023 submitted by the ITD are extinguished, and the SRA cannot be burdened with a new claim at this stage, in accordance with the clean slate theory.
13. With regards to the carry forward of losses in accordance with the reliefs and concessions as mentioned in the clause 9.3 of Resolution Plan, any waiver sought shall be subject to the approval by the Authorities concerned.

The same has been mentioned in para 20 of the order dated 19.04.2024 in I.A. 05 of 2024 while approving the Resolution Plan submitted by the SRA. Para 20 of the order dated 19.04.2024 is extracted below:

20. Reliefs & Concessions:

*According to the Ld. Counsel for the Resolution Professional, the Resolution Applicant has sought the reliefs/concessions as mentioned at page Nos.22 to 31 of the Resolution Plan. We have carefully examined the same. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful. The same view has been taken by the Hon'ble Supreme Court in the matter of **Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited in Civil Appeal No.8129/2019 with Civil Appeal No.1554/2021 and 1550-1553/2021, decided on 13.04.2021.***

14. Based on the aforementioned observations and findings, we find that the SRA cannot be saddled with belated or new claims once the Resolution Plan is approved by the CoC. Thus, the claim of the ITD amounting to Rs 317,05,46,484/- stands extinguished and cannot be entertained at this stage. With regards to the prayer to carry-forward losses, we direct the Applicant to approach the concerned Authorities as it would not be apt for this Authority to interfere with the jurisdiction of the Governmental Authorities in view of the waiver clause in the Resolution Plan.
15. In view of the aforesaid discussion, the application is disposed of accordingly.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)