

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK**

**I.A(IB) No. 139/CB/2022**

**In**

**T.P. No. 43/CTB/2019**

**CP.No. 371/KB/2017**

***In the Matter of:***

Application filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with section 74 (3) of the Insolvency and Bankruptcy Code, 2016 along-with Rule 11 of the National Company Law Tribunal Rules, 2016

***In the Matter of:***

**1. GANASHAYAM MISRA & SONS PRIVATED LIMITED**, having its registered office at- 2<sup>nd</sup> Floor, 7 Waterloo Street, Kolkata, West Bengal- 700069

**2. ORISSA MANGANESE & MINERALS LIMITED**, having its registered office at- IPICOL House, 3<sup>rd</sup> Floor, Annexe Building, Janpath, Bhubaneswar, Khordha, Odisha- 751022

**...Applicant/Successful Resolution Applicant**

**-Versus-**

**1. Deputy Commissioner of Commercial Taxes**, Adityapur Circle, Department of Commercial Taxes, Sakchi, P.O. Jamshedpur- 831 001, Jharkhand

**2. Commissioner of Commercial Taxes**, Department of Commercial Taxes, 3<sup>rd</sup> Floor, Project Bhawan, Dhubra, P.O. – Ranchi- 834 002, Jharkhand

**3. Joint Commissioner of Commercial Taxes (Appeal)**, Department of Commercial Taxes, Jamshedpur Division, Near- Old Court Complex, Sakchi, P.O.- Jamshedpur- 831 001,

**...Respondent (s)**

**-In-**

***In the Matter of:***  
**STATE BANK OF INDIA,**

**...Financial Creditor**

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**-Versus-**

**ORISSA MANAGNESE & MINERALS LIMITED,**

**...Corporate Debtor**

*Appearances (through video conferencing)*

For the Applicants : Mr. Amit pattnaik, Advocate

For the Respondents : Mr. T.K. Satpathy Sr. Standing Counsel,IT.

**Order reserved on: 05.12.2022**

**Order pronounced on:24.01.2023**

Coram:

Shri P. Mohan Raj : Member (Judicial)  
Shri Satya Ranjan Prasad : Member (Technical)

**ORDER**

***Per P. Mohan Raj, Member, (Judicial)***

1. This application is filed by the successful resolution applicant of corporate debtor of Orissa Manganese & Minerals Limited to quash the demand notice dated 27.01.2021 Annexure 'D' demand notice dated 10.03.2021 Annexure 'E' and demand notice dated 21.10.2022 Annexure 'H' issued by the Respondents and for other orders.

2. There are two respondents in the application, R1 to R2 appeared and filed their replies.

3. The financial creditor State Bank of India filed petition CP No.371/KB/2017 against the corporate debtor Orissa Manganese & Minerals Limited for an initiation of Corporate Insolvency Resolution Process before the

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National Company Law Tribunal, Kolkata, under Section 7 of the Insolvency and Bankruptcy Code, 2016. The CIRP was ordered on 03.08.2017. The resolution Professional of corporate debtor Orissa Manganese & Minerals Limited effected, public announcement inviting claims from the creditors of the corporate debtor. The last for the for submission of claim by the creditors was 18.08. 2017. The period for submission of claims was extended from time to time and finally claims submitted up to 25.04.2018 were considered by the Resolution professional. Thereafter COC was constituted. The Respondents not submitted their claims before the Resolution professional. The resolution plan submitted by the 1<sup>st</sup> applicant was approved by this Adjudicating Authority on 22.06.2018. The respondents without filing any claims before the Resolution Professional after the approval of Resolution Plan, now they are sending impugned letters/demand notices claiming outstanding dues relating to the period prior to approval of resolution plan.

4. After the approval of Resolution Plan, now on 27.01.2021 1st respondent issued a letter upon the corporate debtor/2<sup>nd</sup> applicant directing to pay the outstanding amount of Rs.1,17,511/- On 10.03.2021 the 2<sup>nd</sup> respondent issued letter upon corporate debtor/2<sup>nd</sup> applicant to pay Rs.11,91,860/- and on 20.01.2022 (The date is incorrectly mentioned as 21.01.2022 in the petition prayer) 2<sup>nd</sup> respondent issued letter again demanding the corporate debtor/2<sup>nd</sup> applicant to pay Rs.11,91,860/-. The applicants sent reply to respondents by letters dated 08.02.2021, 17.03.2021 and 25.01.22 informing them that after the approval of resolution plan their claims for the period pertaining to prior to admission date

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22.06.2018 are unsustainable, and the claims are extinguished by operation of law. Even after the receipt of the replies sent by 2<sup>nd</sup> applicant, the respondents continuously raising their unlawful demands.

5. The respondents filed their common reply stating that 2<sup>nd</sup> respondent raised the demand for an existing of Rs.11,91,860/- against the 2<sup>nd</sup> applicant for the period 2008-09 to 2010-11 for the financial year 2017-2018 and 2018-19. The outstanding demands are existing since the financial year 2008-09 and 2010-11. The 1<sup>st</sup> respondent raised the demand for Rs.1,84,310/-for the assessment years 2016-17, 2017-2018 and 2018-2019. The outstanding demands are generated by Central Processing centre. The demands were issued to protect the interest of the revenue.

6. Admittedly, the respondents herein had not submitted their claims before the resolution professional. The impugned demand letters/orders appearing in Annexure 'D' 'F' and 'H' are issued by the respondents claiming the dues for the period prior to the admission of CIRP and approval of Resolution Plan. As per Section 31(1) of IBC, 2016 once Resolution Plan is approved the debts for which no provision is made in the resolution plan shall stand extinguished. No claim can be made against the successful resolution applicant this includes the Government dues. This position is made clear after the amendment made in Section 31 of IBC. The Hon'ble Apex Court held in **Ghanshyam Misra & Sons Private Limited -vs- Edelweiss Asset Reconstruction Company Limited Para 77** obsend as follows: -

*“77. It is clear, that the mischief, which was noticed prior to amendment of Section 31 of I & B Code was, that though the legislative intent was*

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*to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by NCLT; on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position, that once such a resolution plan was approved by the Adjudicating Authority, all such claims /dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.”*

7. Further, the resolution plan approved by the adjudicating authority under Section 31 (1) of IBC, 2016 binding upon all concern including central government, State Government and local authorities. All the dues payable by the corporate debtor not reflected in the approved resolution plan will be extinguished. this position of law is reiterated by the Apex Court in **Ghanshyam Mishra and Sons. Versus Edelweiss Asset Reconstruction (2021) (SCC657**

*“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*

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*Adjudicating Authority grants its approval under Section 31 could be continued.*

8. From the above discussion it is made clear that since the respondents failed to submit their claims, before the resolution professional now, they have no right to claim and proceed against the applicants.

9. In the circumstance the request of the applicants are needs to be considered. The impugned demand notice dated 27.01.2021 Annexure 'D' demand notice dated 10.03.2021 Annexure 'F' and demand notice dated 20.01.2022 Annexure 'H' issued by the Respondent are here by quashed and granted consequential injunction restraining the respondents from taking any coercive action against the applicants for liabilities pertaining to any period prior to date of approval of resolution plan. Thus, the petition is **ALLOWED**.

10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Satya Ranjan Prasad**  
**Member (Technical)**

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this 24<sup>th</sup> day of January, 2023.

Supriya-P. s