

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

I.A. (IB) No. 59/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- 2nd Floor, 7 Waterloo Street, Kolkata, West Bengal- 700069

2. ORISSA MANGANESE & MINERALS LIMITED, having its registered office at- IPICOL House, 3rd 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, 3rd 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

-Versus-

ORISSA MANAGNESE & MINERALS LIMITED,

...Corporate Debtor

Appearances (through video conferencing)

For the Applicants : Mr. Amit pattnaik, Advocate

For the Respondents : Mr. Aurobinda Mohanty, Advocate.

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 proceedings of the assessment orders and notices of demand/production of documents for the assessment years 2011-12 to 2017-2018 and for other orders.

2. The application is filed with multiple prayers. There are three respondents in the application, R1 to R3 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 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 informed the respondents by letter dated 15.09.2018 to claims statutory dues; because of the CIRP admitted against the corporate debtor under the provisions of IBC, 2016. The respondents not filed any claim before the Resolution Professional. The resolution plan submitted by the 1st applicant was approved by this Adjudicating Authority on 20.06.2018. The respondents without filing any claims before the Resolution Professional after the approval of Resolution Plan, now they are sending impugned show cause notices and demand notices claiming amounts towards VAT and CST relating to the period prior to approval of resolution plan.

4. The respondents issued notices to 2nd respondent for hearing and Assessment orders for the assessment years 2011-12 to 2017-18 on account of payment of VAT and CST. The 2nd applicant aggrieved by the assessment order and subsequent notices preferred an appeal before the competent appellate authorities. The appellate authority directed the respondents to reassesses its claim of VAT and CST. After reassessment the respondents raised the fresh demands. The demands are prior to the period of CIRP. After the receipt of demands the 2nd applicant replied to the respondents that because of admission of resolution plan on 22.06.2018 the claims are extinguished by operation of law. Even after the receipt of the reply sent by 2nd applicant the respondents continuously raising their unlawful demands.

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5. The notices and demands issued by the Respondents are set out in annexure 'D' and 'E' of Petition as follows: -

SL. No.	PERIOD	ORDER NO.	DATE	ANNEXURES
01.	2011-12	8449	06.09.2012	D
02.	2013-14 VAT Demand	4992	01.06.2016	D
03.	2013-14 CST Demand	4993	01.06.2016	D
04.	2014-15 VAT Demand	487	12.04.2017	D
05.	2014-15 CST Demand	488	12.04.2017	D
06.	2015-16 VAT Demand	12711	26.12.2017	D
07.	2015-16 CST Demand	12712	26.12.2017	D
08.	2015-16 VAT Demand	12370	20.12.2017	D
09.	2016-17 VAT Demand	22682	03.01.2019	D
10	2016-17 CST Demand	22683	03.01.2019	D
11.	2017-18 VAT Demand	22689	31.03.2021	D
12.	2017-18 CST Demand	22830	31.03.2021	D

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13.	2013-14 VAT	106	22.02.2017	E
14.	2013-14 VAT Revised	24865	05.02.2019	E
15.	2013-14 CST	650	17.11.2016	E
16.	2013-14 VAT	6223	08.08.2017	E
17.	2013-14 CST	6224	08.08.2017	E
18.	2013-14 CST Revised	9371	09.10.2017	E
19.	2014-15 VAT & CST	652	05.08.2017	E
20.	2014-15 CST	17258	11.10.2018	E
21.	2015-16 VAT &CST	512	28.09.2018	E
22.	2015-16 VAT	1781	24.10.2018	E
23.	2016-17VAT	165	08.06.2021	E
24.	2016-17 CST	164	08.06.2021	E

6. The 1st respondent filed reply stating that as per sections 50 and 65(4) of JVAT Act Tax to be first charge on property of defaulter, because of CIRP the Tax due should not unextinguished. Further, since the amount payable by the corporate debtor being the public money the same is recoverable by the department under the JVAT Act. On the respondent side referred the Apex court Judgment State Tax Officer vs Rainbow Papers Limited 2022 SCC online SC 1162. There the question

involved is whether the Tax due under the GVAT is a secure credit or not and whether section 53 of IBC over ride section 48 of GVAT Act. In conclusion the Apex court held that due under the GVAT Act is secured credit and section 48 of GVAT Act is not contrary or inconsistent with section 53 of IBC 2016. The said citation is not relevant and distinguishable to facts and circumstances of this case.

7. Admittedly, the respondents herein had not submitted their claims before the resolution professional. The impugned assessment orders and notices of demand/production of documents for the assessment years 2011-12 to 2017-2018 appearing in Annexure 'D' and 'E' are issued by the respondents claiming the dues 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 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.”

8. 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 Adjudicating Authority grants its approval under [Section 31](#) could be continued.

9. 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.

10. In the circumstance the request of the applicants are needs to be considered. The impugned assessment orders and notices of demand/production of documents for the assessment years 2011-12 to 2017-18, Annexure 'D' and 'E' are here by quashed. Thus, the petition prayer 'a' and 'b' are allowed.

In the result, petition is **ALLOWED**.

11. 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,

12. 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 24th day of January, 2023.

Supriya-P.s