

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.15537 of 2016
WP(C) No.15538 of 2016
WP(C) No.15681 of 2016
WP(C) No.15682 of 2016
WP(C) No.15683 of 2016
WP(C) No.15684 of 2016
WP(C) No.15685 of 2016
WP(C) No.15686 of 2016
WP(C) No.15687 of 2016
WP(C) No.15688 of 2016
WP(C) No.15707 of 2016
WP(C) No.15708 of 2016
WP(C) No.15709 of 2016
WP(C) No.15710 of 2016
WP(C) No.15765 of 2016
WP(C) No.15766 of 2016
WP(C) No.15767 of 2016
WP(C) No.15768 of 2016
WP(C) No.15824 of 2016
WP(C) No.15825 of 2016
WP(C) No.15826 of 2016
WP(C) No.15827 of 2016
WP(C) No.16012 of 2016
WP(C) No.16015 of 2016
WP(C) No.16017 of 2016
WP(C) No.16019 of 2016
WP(C) No.16020 of 2016
WP(C) No.16072 of 2016
WP(C) No.16074 of 2016
WP(C) No.16075 of 2016
WP(C) No.16076 of 2016
WP(C) No.16077 of 2016
WP(C) No.16078 of 2016
WP(C) No.16079 of 2016
WP(C) No.16318 of 2016
WP(C) No.16319 of 2016
WP(C) No.16321 of 2016
WP(C) No.16323 of 2016

WP(C) No.16775 of 2016
WP(C) No.16776 of 2016
WP(C) No.16778 of 2016
WP(C) No.16779 of 2016
WP(C) No.16780 of 2016
WP(C) No.16781 of 2016
WP(C) No.16782 of 2016

Sree Metalicks Limited

....

*Petitioner
(In all cases)*

Mr. S.S. Das, Sr. Adv

-versus-

*Tax Recovery Officer-cum-Addl.
Regional Transport Officer of
Barbil*

....

*Opposite Party
(In all cases)*

*Mr.Pravakar Behera
Standing Counsel
(Transport)*

**CORAM:
THE JUSTICE S.PUJAHARI**

**ORDER
22.09.2022**

**Order
No.**

- 14.
1. Since the aforesaid writ petitions have been filed at the instance of the same Petitioner challenging the tax and penalty imposed by the same Opposite Party and similar question of law and facts being involved in all the cases, they were heard together and disposed of by this common order.
 2. The Petitioner has filed these writ petitions with a prayer to quash the Vehicle Checking Report and also seizure of the

vehicles and direct the Opposite Party-Tax Recovery Officer-cum-Addl. Regional Transport Officer of Barbil to release the vehicles mentioned in the respective writ petitions in favour of the Petitioner which were seized for non-payment of the tax and penalty irrespective of the vehicles under the Orissa Motor Vehicles Taxation Act.

3. I have heard Mr. Sourya Sundar Das, learned Senior Counsel appearing for the Petitioner and Mr. Pravkar Behera, learned Standing Counsel appearing for the Opposite Party-Transport Department in all the cases.

4. The case of the Petitioner is that the Petitioner-Company owns an integrated steel plant having its factory situated at Keonjhar District. It started its commercial production on 1st December, 1988 and was engaged in manufacturing of sponge iron, steel and power etc. The Petitioner Company has also been allocated iron ore lease by the Government. The Petitioner-Company from the date of its launching of its commercial production was doing extremely well till the recession in the market. Due to market recession and some changes in the Government policy, the Petitioner-Company became sick and was referred to the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) for rehabilitation. While the Petitioner-Company was doing well in business, it had purchased a number of heavy goods vehicles for transportation

of raw materials and finished products. The vehicles of the Petitioner were registered under the Opposite Party. From the date of purchase of the vehicles till the recession, the Petitioner-Company was clearing the tax. Since the Petitioner-Company could not pay the tax from 01.04.2013 to 30.09.2016, Opposite Party without giving any opportunity of hearing to the Petitioner seized the vehicles from the possession of the drivers of the Petitioner-Company as such the Petitioner-Company has approached this Court for quashing the Vehicle Checking Report in all the writ petitions and release the vehicles in favour of the Petitioner-Company.

5. It appears that pursuant to the interim order vehicles have been released in favour of the Petitioner subject to payment of admitted tax dues in three monthly instalments payable by the Petitioner. However, after the proceeding under SICA was closed due to repeal of the Sick Industrial Companies Act and the enactment of the Insolvency and Bankruptcy Code, 2016 from 20th May, 2016, an additional affidavit on 26.07.2021 has been filed by the Petitioner with the plea that on account of default on the part of the Petitioner in paying the debts, one of the financial creditors i.e. Srei Equipment Finance Limited ('SREI' in short hereinafter) under Section 7 of the Insolvency and Bankruptcy Code, 2016 filed an application against the Petitioner before the NCLT, Kolkata Bench, which was registered as CP(IB) No.16/KB.2017. The NCLT vide order dated 30.01.2017 appointed an Interim Resolution Professional

and declared moratorium under Section 13 of the Insolvency and Bankruptcy Code, 2016. The Interim Resolution Professional on 30.01.2017 made public announcement with regard to the claims under Section 15 of the Insolvency and Bankruptcy Code, 2016. Opposite Party did not submit any claim under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Section 15 of the Insolvency and Bankruptcy Code, 2016. In the meanwhile the Resolution Plan of the Promoter of the Petitioner Company was approved by the Committee of Creditors and the same has also been approved by the NCLT, Kolkata Bench vide order dated 07.11.2017. A copy of which has been annexed as Annexure-6. Once a resolution plan is approved by the Committee of Creditors, it is binding on all the creditors, guarantors, employees and stake holders under Section 31 of the Insolvency and Bankruptcy Code, 2016. In view of the approval of the aforesaid Resolution Plan by the adjudicating authority and no claim having been submitted to the Interim Resolution Professional, the claim of the Opposite Party got extinguished in view of the statutory provisions.

6. During the course of hearing on merit of the prayer, learned counsel for the Petitioner has drawn the notice of the Court to the judgment of the apex Court in the case of **Ghanashyam Mishra and sons Pvt. Ltd. vrs. Edelweiss Asset Reconstruction Company Limited & others** reported in (2021) 9 SCC 657 wherein it has been held as follows:

“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 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 respect 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 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.”

7. The same view has been reiterated in the case of **M/s. Ruchi Soya Industries Ltd. vrs. Union of India & others** reported in **2022- Live Law (SC) 207**.

8. Furthermore, it is submitted that if in the writ petition the nature of relief has become obsolete and in view of the subsequent development a new form of relief will be more efficacious, this Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India can mould the relief.

Reliance in this regard has been placed in the case of **Rajesh D. Darbar and others vrs. Narasingrao Krishnaji Kulkarni and others** reported in **(2003) 7 SCC 219** wherein it has been held that where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts provided the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Further where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact. Also where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of the litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in cause of action or relief. The primary concern of the Court is to implement the justice of the legislation. Rights vested by virtue of statute cannot be divested by this equitable doctrine.

9. Drawing notice of this Court to the aforesaid position of law laid down by the apex Court quoted supra, learned counsel for the Petitioner would submit to declare that the tax and penalty as claimed being extinguished, the Opposite Party is not entitled to realize the same from the Petitioner and as such the Opposite Party to refund the tax paid pursuant to the interim order of this Court.

10. Learned Standing Counsel appearing for the Opposite Party-Transport does not dispute the aforesaid position of law on which reliance has been placed by the learned counsel for the Petitioner. However, he submitted that in the writ petitions no such prayer was made. It is true that when the writ petitions were filed, the aforesaid fact was not in existence. But later on the proceeding having been initiated in the year 2017, the Petitioner could have very well amended his prayer that the claim of one of the financial creditors is subject to NCLT proceeding and as such the claim of the Opposite Party if any is required to be adjudicated in the NCLT proceeding there. Furthermore, even after approval of the Resolution Plan the Petitioner has also not amended the writ petition simply he has brought to the notice of the Court the subsequent development. From the Resolution Plan at Annexure-7 at Page 7 to 215 approved by the adjudicating authority it has also been clearly mentioned in Clause-E2/2, E/2/3, Clause 7.1.1 and 7.1.2 that the SML has outstanding statutory liabilities of around Rs.37.86 crores as on 31.3.2017 and it has also various litigation initiated by the

financial/operational creditors as detailed in the plan. In addition to the regular operation creditors the SML has also certain old operational creditors whose outstanding amount payable as on 31.3.2017 stood at 36.49 crores. So also as per the Resolution Plan, the liquidation value payable to the operational credit is Nil. The total old operational credits are coming around Rs.36.49 crores. SML proposes to settle the same at an average level of around 30% in a gradual manner although the liquidation value payable to operational creditor is Nil. As per the Resolution Plan, the liquidation value payable in respect of the statutory liabilities is Nil. However, SML proposes to settle the entire statutory liabilities gradually matching with the cash flow over a period covering from financial year 2018 to financial year 2025. As per the payment plan under the Resolution Plan, it is seen that except for Clause-A secured creditors, other financial creditors as well as operational creditors are not getting any amount at all. As against that as per the debt resolution plan, different classes of creditors would get a significantly higher amount as under. In the table it has been mentioned in Item-C in Serial No.1 and 2 that the operational creditors would get statutory liability of Rs.3071.00 lakhs and other operational creditors of Rs.15552.74 lakhs. The management and control of SML will continue in the hands of the existing management who have the required Techno Commercial as well as the financial liabilities to manage the affairs of the company during implementation period. SML is opened to accept any reasonable monitoring arrangement as might be imposed by the COC in this behalf.

11. Drawing the notice of this Court to the aforesaid, it is submitted by the learned Standing Counsel appearing for the Opposite Party-Transport that since in the Resolution Plan approved by the adjudicating authority, it has been admitted by the SML, the Petitioner, to settle the statutory liabilities and operational debt at an average level matching with the cash flow over a period from the financial year 2018 to financial year 2025. SML has admitted to settle the said dues even though the claims have not been submitted by the statutory authority/operational creditors. Hence, it is fallacious to say that since no claim was raised with regard to the statutory dues the same got extinguished in view of the law laid down as aforesaid. It is further submitted by him that the Petitioner having not amended the writ petitions and making a prayer by way of additional affidavit, the Petitioner is not entitled to the relief sought for as that would amount to denial of natural justice to the Opposite Party. Since the Opposite Party has not been given any opportunity to counter the factual aspect by filing a counter as pleaded in the additional affidavit, this Court, therefore, should be loath in granting such relief to the Petitioner in these writ petitions, submits the learned Standing Counsel for the Opposite Party-Transport.

12. After hearing the learned counsel for the parties and going through the materials on record particularly the pleading, admittedly the Petitioner has not amended the prayer in the writ petitions nor incorporated the aforesaid facts by way of an

amendment. But by fling an additional affidavit, drawing the notice of the Court to the subsequent development in the NCLT i.e. the finalization of the Resolution Plan approved by the NCLT and also the law laid down as quoted supra, he has sought for the relief. Since the Petitioner has not incorporated the aforesaid plea in the writ petitions nor he has amended the prayer, allowing such prayer of the Petitioner would amount to take the Opposite Party by surprise that too without giving any opportunity to rebut such factual aspect that the Petitioner had not raised any claim when the Interim Resolution Professional made an advertisement to raise such claims under Section 15 of the Insolvency and Bankruptcy Code, 2016. The same would amount to violation of the principle of natural justice. Therefore, notwithstanding the law down by the apex Court in the case of **Ghanashyam Mishra** (supra) and **M/s. Ruchi Soya Industries Ltd** (supra) and **Rajesh D. Darbar** (supra), this Court is unable to accept the submission of the learned counsel for the Petitioner. But the Petitioner having a prima facie case, this Court disposes of all the writ petitions giving liberty to the Petitioner to approach this Court within two months hence, if so advised, by fling the appropriate petitions incorporating the aforesaid plea and prayer and till then, no coercive steps shall be taken against the Petitioner and/or the vehicles for realization of the penalty dues by the Opposite Party. If the Petitioner approaches this Court within the time stipulated, the deposit made with regard to the tax pursuant to the interim order of this Court and the penalty stated to be payable shall be subject to the order passed in the

said writ petitions. However, if the Petitioner does not approach this Court within the time stipulated, there is no impediment on the part of the Opposite Party to realize the statutory dues, if any, pending against him in the manner known to law.

13. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

PKS/DA

