IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18774 of 2022

M/s. ESL Steel Limited and another .... ***Petitioners***

Mr. C.R. Das, Advocate

-versus-

The Union of India and others .... ***Opposite Parties***

Mr. T.K. Satapathy, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

<u>ORDER</u>
14.12.2022

<u>Order No.</u>

01. 1. Admittedly, the resolution plan in respect of the present Petitioners was approved by the National Company Law Tribunal on 17th April 2018.

2. As far as the impugned demand raised in the present writ petition by the Customs Department, it pertains to the period prior thereto.

3. With the resolution plan already having been approved, all liabilities of the Petitioners prior to the aforementioned date of the resolution plan would stand extinguished in terms of the judgment of the Supreme Court of India in ***Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited 2021 SCC OnLine SC 313*** where it has been held as under:

> "93. As discussed hereinabove, one of the principal objects of I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon

admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an ongoing concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

94. We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation.

95. There is another reason which persuades us to take the said view. Clause (10) of Section 3 of the I & B Code defines "creditor" thus:

"3. (10) "**creditor**" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;"

96. Clauses (20) and (21) of Section 5 of the I&B Code define "operational creditor" and "operational debt" respectively as such:

"5. (20) "**operational creditor**" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "**operational debt**" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment 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;"

97. "Creditor" therefore has been defined to mean "any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder". "Operational creditor" has been defined to mean a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. "Operational debt" has been defined to mean a claim in respect of the provision of goods or services including employment or a debt in respect of the payment 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.

98. It is a cardinal principle of law that a statute has to be read as a whole. Harmonious construction of clause (10) of Section 3 of the I&B Code read with

> clauses (20) and (21) of Section 5 thereof would reveal that even a claim in respect 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 would come within the ambit of "operational debt". The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of "operational creditor" as defined under clause (20) of Section 5 of the I&B Code. Consequently, a person to whom a debt is owed would be covered by the definition of "creditor" as defined under clause (10) of Section 3 of the I&B Code. As such, even without the 2019 Amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term "creditor" and in any case, by the term "other stakeholders" as provided in sub-section (1) of Section 31 of the I&B Code."

4. The above decision has been followed by this Court in its judgment dated 21st June 2021 in W.P.(C) No.8259 of 2019 (***M/s. Sree Metaliks Ltd. v. State of Odisha)***.

5. In that view of the matter, following the above decisions, the Court quashes the demand challenged in the present writ petition. The writ petition is accordingly disposed of.

6. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin