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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.19 OF 2025

1)Karthik Alloys Limited,
CIN: U31200WB1992PLC@73446,
A Company incorporated under
The Companies Act, 1956, having
Its registered office at; 89 Mouza,
Waria Road, Angadpur, Bardhaman,
Durgapur MC, West Bengal – 713215.
Importer Exporter Code; 1796000566
Email address: karthikalloyslimited@gmail.com
Through its authorised signatory;
Susmita Mukherjee, Director. ...PETITIONER

VERSUS

1. Union of India, Through the
Secretary, Department of Revenue,
Ministry of Finance, Room no. 66A,
North Block, New Delhi – 110001.

2. The Assistant Commissioner of
Customs, Goa, Office of the Commissioner
Of Customs, Custom House, Marmagoa,
Goa-403803.
Email address: goacustomsadjudication@gmail.com
... RESPONDENTS

Mr Ranit Basu with Ms. Maitri Malde and Mr. Siddharth Nunes, Advocates for the Petitioner.

Ms. Asha A. Desai, Standing counsel for Central Government.

CORAM:- M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.
DATED :- 25th February, 2025

JUDGMENT (Per Nivedita P. Mehta, J.)

1. Rule. Rule is made returnable forthwith. With the consent of parties heard finally.

2. By the present petition, the petitioner is assailing the impugned order dated 21.10.2024 passed by respondent no.2 demanding a duty drawback of Rs. 10,01,724 (Rupees Ten Lakhs One Thousand Seven Hundred and Twenty-Four only/-) under Section 75(1) along with interest under Section 75 A (2) of the Customs Act, 1962 and Rules 18(2) of the Customs and Central Excise Drawbacks Rules, 2017.

3. Succinctly, the petitioner herein is a company incorporated under the Companies Act, 1956, bearing CIN: U31200WB1992PLC273446 and its registered office at 89 Mouza, Waria Road, Angadpur, Bardhaman, Durgapur MC, West Bengal - 713215, involved in the manufacturing of ferroalloys and other metals, under the name and style of "Karthik Alloys ltd."

4. The petitioner has been successfully resolved under a corporate insolvency resolution process(hereinafter referred to as, “CIRP”)in proceedings before the National Company Law Tribunal,

Mumbai Bench (hereinafter referred to as "NCLT") in CP/IB/2119/MB/2019 under the terms of the resolution plan as approved by the Committee of Creditors (hereinafter referred to as "COC").

5. The CIRP proceedings were initiated when Vedanth.com Worldwide Ltd. submitted an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the code") in their capacity as operational creditors. The NCLT allowed the application, and the petitioner was admitted into CIRP vide order dated 17.12.2019. Subsequently, a Resolution Professional (hereinafter referred to as "RP") was appointed to manage the petitioner's affairs as a going concern. On 06.01.2020, the RP invited claims from the petitioner's creditors through various newspapers. Based on the claims submitted, the RP formed a COC. The RP received claims from various classes of creditors and admitted statutory dues of Rs. 2.135 Crores. Thereafter, the NCLT declared a moratorium upon the petitioner under Section 14 of the code from 17.12.2019 to 03.03.2023. On 18.11.2020, a show-cause notice was issued by respondent No.2 to the petitioner for non-submission of eBRCs (Bank Realization Certificates) and non-realization of remittance.

6. The COC approved the resolution plan submitted by QVC Exports Ltd. on 13.07.2021. QVC Exports Limited acquired 100% ownership of the petitioner when the NCLT approved the resolution plan.

7. The petitioner is now under 100% ownership of QVC Exports Limited. The Assistant Commissioner of Customs, Goa (Respondent No.2) issued an order dated 21.10.2024 directing the petitioner to pay an amount of Rs. 10,01,724/- as duty drawbacks under Section 75(1) of the Customs Act, 1962 (hereinafter referred to as "the Act") along with interest under Section 75A (2) read with rule 18(2) of the Customs and Central Excise Drawback Rules, 2017.

8. Being aggrieved by the order dated 21.10.2024 passed by respondent no. 2 demanding a duty drawback of Rs. 10,01,722/- (Rs. Ten Lakhs, one thousand and seven hundred and twenty-Four only/-) along with interest, the present petition is filed.

9. In reply to the petition the respondents have contended that the petitioner had filed 15 shipping bills (under the Drawback Scheme) under Section 75 of the Customs Act, 1962 and Central Excise Duties Drawback Rules 2017, as per All Industry Rate. The respondents contend that the drawback of Rs. 10,01,724 /- (Rs. Ten Lakhs, one thousand seven hundred and twenty-four only/-) was

sanctioned and disbursed to the petitioner through respondent no. 2 Electronic Date In charge (EDI) system during the period from 01.01.2018 to 30.06.2018 which is prior to admittance of the petitioner to CIRP. It is further contended that the petitioner had not produced any evidence of the realization of export proceeds in the form of Bank Realization Certificates within the period which is a requirement under Section 8 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as "FEMA") read with Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000.

10. It is further contended that in the absence of evidence in the form of eBRCs, in respect of the 15 shipping bills, which were not received within the time limit stipulated in sub-rule (1) of Rule 18 of the Drawback Rules, 2017, a show-cause notice dated 18.11.2020 was raised on the grounds of non-submission of e-BRCs and non-realization of remittance.

11. It is the respondent's case, that in the course of the hearings, the only insistence made upon the petitioner was to provide copies of e-BRC(s) in respect of the exports which occurred in 2018 before the initiation of the CIRP. It is submitted that such production of e-BRC(s) was a statutory obligation of the petitioner under the FEMA.

It is further contended that the obligation cast on the petitioner concerning the period for production of E-BRC(s) as contemplated under FEMA predates the initiation of CIRP.

12. The respondents contend that the submission of the petitioner that given the approval of the Resolution Plan, the said demand amounts to a waiver of any statutory obligations of the Corporate Debtor is unfounded.

13. It is submitted by the respondents that the petition is not maintainable as a statutory remedy for filing an appeal is contemplated under Section 128(1) of the Act.

14. Learned counsel Mr. Ranit Basu for the petitioner submitted that no proceedings could have been initiated against them by respondent no. 2 as they had not filed their claim with the RP. After the approval of the resolution plan by the NCLT, the affairs of the petitioner and erstwhile management were transferred to the successful resolution applicant. Consequently, they were not in possession of the show cause notice issued in the pendency of the moratorium period.

15. Further, it is submitted by the counsel for petitioner that vide letter dated 26.02.2024, they had intimated respondent no.2 of their successful revival in terms of the approved resolution plan. The

petitioner's letter stated that the approval resolution plan contained specific clauses in respect of custom dues.

16. It is submitted by the counsel for the petitioner that the approval of the resolution plan by the NCLT will be treated as a waiver of all kinds of liabilities including custom duties that may arise out of ongoing disputes or pending assessments for years, prior to the completion of the CIRP and shall be treated as finally settled at NIL value.

17. It is further stated even in case any liability may arise such liability cannot be fastened with the fresh management of the petitioner. It is submitted that it would defeat the intention and purpose of this code to grant the revived entity a fresh beginning and a clean slate, if the new management is not released from the obligations and transgressions accrued before the resolution plan was approved.

18. The learned counsel for the petitioner submits that under Section 31 of the IBC once a resolution plan has been accepted, the respondents cannot raise any claims now that the CIRP has been concluded. Further, he submits that the Show Cause Notice was issued by the respondents during the moratorium period, under Section 14, hence all subsequent proceedings are barred. The

respondents may account for its liability but not by initiating proceedings once the CIRP has been concluded. The learned counsel for the petitioner relied on the judgments of the Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and others; 2021 SCC Online SC 313*** and of this court in ***Uttam Galva Metallics Ltd. And another Vs. Assistant Commissioner of Income-tax and others; 2024 SCC Online Bom 2905***.

19. Learned counsel for respondents Ms. Asha Desai while vehemently opposing the petition argued that the petition is not maintainable because the petitioner has an alternate remedy which is statutory in nature under Section 128 of the Act and can agitate their rights in an appeal before the Commissioner (Appeals). The liability still stands despite demand of duty drawback is not a claim placed on the petitioner, but rather a statutory requirement under the Act. She argued that the approval of the RP should not be considered as a waiver of statutory obligations and the same should be dealt with as per law.

20. It is further contended that the burden of production of evidence in respect of the realisations of export proceeds is not a claim placed on the petitioner, but rather a statutory obligation under

the law in force. Therefore, it was not incumbent on respondent no.2 to file a claim with the Resolution Professional.

21. It is argued by the respondents that there is no time limit for recovery of drawback disbursed under the act while repelling the contention of the petitioner that since the show cause notice was issued after the moratorium period was declared, under Section 14 of the Code, such proceedings would stand barred.

22. We have heard the learned counsel for the petitioner and the respondents. It would be at the outset relevant to take note of the decision of the Hon'ble Supreme Court in *Ghanshyam Mishra* (Supra), which the NCLT has relied upon in its order dated 03.03.2023. The NCLT has considered the said judgement and in paragraphs 7.10 and 7.11 held as under:

> *7.10 In terms of the judgement of Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, "on the date of approval of the 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."*
>
> *"95. (i) 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 the 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;

7. 11 In view of the above judgement, the applicant is entitled to waivers/ concessions/reliefs as expressly provided under the Code and under any other law for the time being in force.

The Hon'ble Supreme Court in the aforesaid decision in a lucid manner settled the legal position on various issues arising under the Insolvency and Bankruptcy Code, 2016.

23. The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited through authorized signatory Vs, Satish Kumar Gupta & others 2020 (8) SCC 531***, was examining the various aspects pertaining to Section 31(1) of the IBC wherein it has been stipulated that once the resolution plan is approved, all claims

stand extinguished, and the Corporate Debtor is handed over to the Resolution applicant as a "fresh slate". It has been held that

> "107. *…A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."*

24. The personal hearings were held by Respondent No.2 on 22.02.2024 and again on 14.08.2024, wherein neither the petitioner nor the petitioner's authorised representative were present. The petitioner preferred their responses vide letters dated 26.02.2024 and

13.08.2024, wherein they submitted that M/s Karthik Alloys Ltd. had been admitted for CIRP and a resolution plan had been approved by the NCLT. It was submitted in the letters by the petitioner, that in view of the acceptance of the resolution plan, no dues remain unpaid.

25. In the final virtual hearing held by respondent No. 2 on 17.09.2024, the attendees were representatives of the resolution applicant, QVC Exports Ltd. who re-iterated that in view of the NCLT's order allowing the resolution plan, M/s Karthik Alloys ltd. had ceased to be in existence.

26. In the present case the respondents did not lodge their demand in respect of the duty drawbacks against the petitioner during the CIRP. Admittedly, the claim of the respondents is not a part of the approved resolution plan. It is therefore, abundantly clear that a claim brought to the fore during the pendency of the moratorium period after the claims have been recorded by the adjudicating authority would stand waived off in terms of Section 31A of the code.

27. We are however not inclined to relegate the petitioner to the remedy of an appeal as the case of the petitioner is squarely covered by the decisions of the Hon'ble Supreme Court in *Ghanashyam*

(supra) and in the view of the well-settled position of law.

28. In view of the aforesaid facts and circumstances of the case, we are of the considered opinion that in the light of the authoritative judicial pronouncements by the Hon'ble Supreme Court and this Court hereinabove, we have no hesitation in quashing and setting aside the impugned order dated 21.10.2024. The writ petition stands allowed.

29. Rule is made absolute in the above terms. No order as to costs.

NIVEDITA P. MEHTA, J. **M. S. KARNIK, J.**

Signed by: SHAKUNTALA ZALMI
Designation: Personal Assistant
Date: 05/03/2025 10:12:53