

ANJALI
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1435 OF 2025

Amns Gandhidham Ltd
(formerly known as "Indian Steel
Corporation Ltd")

.. Petitioner

Versus

Assistant Commissioner of Income Tax
Central Circle 7 (2), Mumbai & Ors

.. Respondents

WITH
INTERIM APPLILCATION NO.6449 OF 2025
IN
WRIT PETITION NO.1435 OF 2025

ArcelorMittal Nippon Steel
India Pvt Ltd
IN THE MATTER BETWEEN
AMNS Gandhidham Ltd

..Applicant

..Petitioner

Versus

Assistant Commissioner of Income Tax
Central Circle 7 (2), Mumbai & Ors

..Respondents

Mr. Venkatesh Dhond, Senior Advocate, with Mr. Niraj Sheth, Vishal Shriyan, Aditya Seetharaman, Gunjan Kakkad, Samarth Jaidev i/b Vishal Shriyan, Advocates for the Petitioner.

Mr. Suresh Kumar, Advocates for the Respondents.

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: OCTOBER 17, 2025

P. C.

1. At the outset, it is brought to our notice that after this Petition was filed, the Petitioner was amalgamated with ArcelorMittal Nippon Steel India Private Limited. Mr. Dhond, the learned Senior Counsel appearing for the Petitioner, sought leave to carry out the necessary amendment in the cause title of the Petition. The learned counsel for the Revenue fairly did not oppose to this amendment. Considering that this is a formal amendment, Interim Application (L) No. 31813 of 2025 is allowed and the Petitioner is permitted to carry out the said amendment. The amendment shall be carried out forthwith in front of the Associate. Re-verification is dispensed with.

2. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

3. By this Petition, the Petitioner prays for quashing and setting aside of the assessment proceedings for the Assessment Years 2022-23 and 2023-24 on the ground that conducting these proceedings would be an academic exercise since no demand can be raised on the Petitioner nor can its claim for carry forward of unabsorbed losses or unabsorbed depreciation be denied. It is stated that prior to the commencement of the impugned

assessment proceedings, a resolution plan submitted by one ‘AM Mining India Private Limited’ in the Petitioner’s case came to be approved by the National Company Law Tribunal, Ahmedabad Bench (“**NCLT**”) *vide* its order dated 13th April 2023 as per Section 31 of the Insolvency and Bankruptcy Code, 2016 (for short “**the IBC**”). In paragraph 9 of its order, the NCLT has categorically ruled that “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 a part of the Resolution Plan.”. The NCLT has relied on the decision of the Hon’ble Supreme Court in ***Ghanshyam Mishra & Sons Pvt Ltd V/S Edelweiss Asset Reconstruction Company Ltd & Ors. [(2021) 9 SCC 657]***.

4. The NCLT order was subsequently upheld by the National Company Law Appellate Tribunal, New Delhi (“**NCLAT**”) in CA(AT)(Ins) No. 1135 of 2023 *vide* its Order dated 11th September 2023. The Hon’ble Apex Court, by way of its Order dated 6th November 2023 passed in Civil Appeal Diary No. 44512 of 2023 upheld the order passed by NCLAT. Therefore, the Resolution Plan has attained finality.

5. During pendency of the CIRP, in accordance with Section 79 of the Income-tax Act, 1961 (for short, “**the I.T. Act**”), the Interim Resolution

Professional of the Petitioner had intimated the Principal Commissioner of Income-tax, Central-4, Mumbai on 27th June 2022 about the ongoing CIRP proceedings. However, no claims for Assessment Years under consideration were filed by the Income Tax Authorities with the IRP.

6. Mr. Dhond submits that once a Resolution Plan is approved in accordance with the provisions of the IBC, the dues of the Income Tax Department would have to be governed by what is stated in the approved Resolution Plan. He submitted that the implementation date of the Resolution Plan was 6th May 2023 and the impugned proceedings pertain to a period prior to the implementation date, which is expressly prohibited by the approved Resolution Plan. He submits that the plan was brought to the notice of the Respondents vide letters dated 8th July 2024 and 21st January 2025, filed in response to the notices issued on 23rd June 2024 under Section 143(2) and 13th January 2025 under Section 142(1) of the I.T. Act. Despite this, the objections raised by the Petitioner have been rejected. He submitted that the “clean-slate” principle would clearly envisage allowance of carry forward of losses since denial of carry forward of losses would result in demands being foisted on the Petitioner in future years on account of non-availability of the losses. He submitted that an opportunity of being heard was provided to the Principal Commissioner during the course of the CIRP

proceedings as envisaged in Section 79 (2) (c) of the I.T. Act and since no objection was raised during the stage of those proceedings, now the Respondents cannot be permitted to re-examine the same by issuing notices to carry out assessment proceedings as that would be contrary to the “clean slate” principle. He submitted that that availability of such losses was undoubtedly one of the factors that would have been taken into account by the Resolution Applicant when submitting its proposal.

7. Mr. Suresh Kumar, the learned Counsel for the Respondents relied on the stand taken in the affidavit in reply and in the impugned order dated 7th February 2025 rejecting the objections raised by the Petitioner.

8. We have heard the learned counsels for the parties. The issue to be decided in the present petition is whether the Respondents can be permitted to proceed with the assessment proceedings when the approved Resolution Plan expressly prohibits any person from initiating or continuing any proceedings against the Petitioner. The implementation date of the Resolution Plan was 6th May 2023 and the impugned proceedings pertain to the period prior to the implementation date. We find that the challenge to the proceedings to be well founded. In the case of ***Ghanashyam Mishra and***

Sons Pvt. Ltd. Vs Edelwiss Asset Reconstruction Company limited, (2021) 9 SCC 657, it has been held as follows:

“102. In the result, we answer the questions framed by us as under:

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 the 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. “”

9. Further in the case of ***Vaibhav Goel v/s CIT, 2025 SCC Online SC 592*** it has been held as under :

8. *In view of the declaration of law made by this court, all the dues including the statutory dues owed to the Central Government, if not a part of the resolution plan, shall stand extinguished and no proceedings could be continued in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 of the Insolvency and Bankruptcy Code. In this case, the Income-tax dues of the corporate debtor for the assessment years 2012-2013 and 2013-2014 were not part of the approved resolution plan. Therefore, in view of sub-section (1) of section 31, as interpreted by this court in the above decision, the dues of the first respondent owed by the corporate debtor for the assessment years 2012-2013 and 2013-2014 stand extinguished.*

10. In the case of ***AMNS Khopoli Limited v/s. Assistant Commissioner of Income Tax and Others***, reported in [(2024) SCC OnLine Bom 1213], this Court held thus:

“11. ...A similar situation came up for consideration before this court in the case of *Alok Industries Limited vs. Assistant Commissioner of Income Tax 1* where the court following the judgment of the Hon'ble Apex Court in *Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. 2* , held that all dues including statutory dues owed to the Central Government, 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 a period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the Act could be continued. Even though in the case of *Alok Industries Limited*

(supra) notices had been issued under Section 148A of the Act and Section 148 of the Act, in our view that would not make any difference. We should also note that even in Alok Industries Limited (supra) the Revenue had made it clear that they do not wish to recover any money from assessee...

- 15. In the circumstances, since the Resolution Plan expressively provides that no person shall be entitled to initiate any proceedings or inquiry, assessment, enforce any claim or continue any proceedings in relation to claims so long such result to a period prior to the Effective Date of the Resolution Plan, i.e., 10th November 2022 impugned notices are bad in law. Further, the impugned notices are bad in law also because respondents failed to take into account that after approval of the Resolution Plan by the NCLT, a creditor including the Central Government, State Government or local authority is not entitled to initiate proceedings on the Resolution Applicant, in relation to claims which are not part of the Resolution Plan approved by the NCLT. Pertinently, respondents had not submitted any claims to the IRP, as required under the Code, despite the public announcement being issued by the IRP, as prescribed under the Code. 16. The impugned notice issued under Section 143(2) of the Act by Respondent No. 1 and the consequential impugned notices issued under Section 142(1) of the Act by Respondent No. 2 and all subsequent communications issued by Respondent No. 2 pursuant to the aforementioned impugned notices are bad in law since assessment and inquiry under the Act is sought to be initiated in gross violation of provisions of the Code in as much as it relates to a period prior to the Effective Date.”*

11. In the case of ***Uttam Value Steels Ltd v/s. Assistant Commissioner of Income Tax & Anr.*** (Writ Petition No. 9420 of 2022 decided on 28.08.2024) this Court held thus:

*“16. In this clear view of the matter, there can be no manner of doubt that the Impugned Proceedings initiated by the Revenue and sought to be defended as if they relate to liabilities that somehow emerge after the CIRP, are wholly misconceived and untenable. The resolution plan, upon its approval, brought a quietus to all claims pursued or capable of being pursued by the Revenue against the Petitioner-Assessee for any operation prior to the CIRP. The stance of the Revenue in the Reply Affidavit, namely, that if the tax claim amount had not been crystallised, would be future dues and not past dues, is totally untenable. **Ghanshyam Mishra** makes it clear that the continuation of existing proceedings and the initiation of new proceedings, as they relate to operations prior to the CIRP, are totally prohibited after the approval of the resolution plan. Consequently, nothing would survive insofar as the Impugned Proceedings relate to the Petitioner-Assessee.*

*17. We may mention that a co-ordinate bench of this Court has followed and applied **Ghanashyam Mishra** in at least two judgments, to rule that proceedings initiated by the Revenue in respect of tax for a period prior to the CIRP, cannot be continued. In Alok Industries Ltd. v. Assistant Commissioner of Income-tax³, a Division Bench of this Court held in favour of the Assessee quashing various proceedings for reassessment initiated against a corporate debtor that had undergone a resolution under the IBC. So also, in AMNS Khopoli Limited v. Assistant Commissioner of Income Tax and Others⁴ (**AMNS Khopoli**) the reassessment proceedings initiated in the facts of that case were quashed and set aside by a Division*

Bench of this Court...”

12. This issue has also come up for consideration before this Court in the case of ***Swan Defence and Heavy Industries Ltd V/S Assistant Commissioner of Income Tax Central Circle 6(3) & Ors (in Writ Petition (L) No.22088 of 2025)***. In that case, following the ratio laid down by the Hon’ble Supreme Court in ***Ghanshyam Mishra & Sons Pvt Ltd V/S. Edelweiss Asset Reconstruction Company Ltd & Ors. [(2021) 9 SCC 657]***, similar actions of the Income Tax Department were set aside.

13. Similarly, in ***Alok Industries Ltd. Vs. ACIT [2024] 161 taxmann.com 285 (Bombay), Uttam Galva Metallics Ltd. vs. ACIT [2024] 166 taxmann.com 492 (Bombay)*** and ***Order dated 21st July 2025 passed by this Court in Writ Petition No. 2698 of 2025 (Ornate Spaces Private Limited Vs. DCIT.)***, following the ratio of the judgment of the Hon’ble Apex Court in the case of ***Ghanshyam Mishra (supra)***, this Court has quashed the proceedings taken by the Income Tax Authorities for periods prior to the implementation date in view of the approval of the Resolution Plan by the NCLT.

14. As regards to the Revenue's contention that allowability of losses can be examined by the Respondents, we find that this would not be permissible in the facts of the present case because notice to the Principal Commissioner under Section 79 (2) (c) of the I. T. Act was served on the Principal Commissioner on 28th June 2022 and the Principal Commissioner did not make any submissions at the time when the Resolution Plan was approved by the NCLT or any time prior thereto. Once this is the case, denial of carry forward of losses cannot be denied to the Petitioner. We say this also because we find merits in the Petitioner's contention that availability of such losses would be one of the factors that would have been taken into account by the Resolution Applicant when submitting its proposal to take over the Corporate Debtor (namely, the Petitioner).

15. In view of the above, the impugned proceedings for assessment years 2022-23 and 2023-24 are quashed and set aside. However, there shall be no order as to costs.

16. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

17. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by fax
or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]

[B. P. COLABAWALLA, J.]