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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2666/2023

LEMON ELECTRONICS PRIVATE
LIMITED

.....Petitioner

Through: Mr. Nikhil Gupta, Mr. Prince
Nagpal & Mr. Rochit Abhishek,
Advs.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

.....Respondents

Through: Mr. Gaurav Gupta, Sr. SC with
Mr. Shivendra Singh and Mr.
Yojit Pareek, JSCs for R-1 & 3.

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+ W.P.(C) 4935/2023

LEMON ELECTRONICS PRIVATE
LIMITED

.....Petitioner

Through: Mr. Nikhil Gupta, Mr. Prince
Nagpal & Mr. Rochit Abhishek,
Advs.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Siddhartha Sinha, SSC with
Ms. Anuja Pethia and Mr.
Dacchita Sahi, JSCs with Mr.
Srikant Singh and Ms. Anu
Priya Minz, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

04.03.2025

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1. These two writ petitions impugn the reassessment action initiated by the respondents under Section 148 of the Income Tax Act,



1961 [‘Act’] and pertaining to Assessment Year [“AY”] 2014-2015 [W.P.(C) 2666/2023] and AY 2019-2020 [W.P.(C) 4935/2023].

2. The principal ground of challenge to those proceedings is based on Section 31(1) of Insolvency and Bankruptcy Code, 2016 [“IBC”] with it being contended that once the Resolution Plan had come to be approved by the National Company Law Tribunal [‘NCLT’], any proceedings pertaining to a period prior to the approval so granted would not sustain. The submission essentially proceeds on the basis of the clean slate theory that courts have enunciated in the context of the IBC.

3. We note that while dealing with an identical question, we had in **M Tech Developers Pvt. Ltd. vs. National Faceless Assessment Centre, Delhi & Anr.** [2024 SCC OnLine Del 2776] observed as follows:

“6. The fact that a resolution plan once approved would bring the curtains down on any claims pertaining to a period prior to the approval of the resolution plan is no longer res integra.

7. We note that while dealing with an identical issue, we had in *Ireo Fiverriver Pvt. Ltd. v. Income Tax Department* recognized the legal position to be as under: -

“3. It is in the aforesaid backdrop that we take note of the judgment rendered by the Supreme Court in *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* [Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 : (2021) 4 SCC (Civ) 638 : (2021) 91 GSTR 28 : (2021) 227 Comp Cas 251] wherein the following principles came to be laid down (227 Comp Cas p. 306): (SCC pp. 714-715, paras 93 and 94)

‘93. As discussed hereinabove, one of the principal objects of the Insolvency and Bankruptcy Code is providing for revival of the corporate debtor and to make it a going concern. The Insolvency and Bankruptcy Code is a complete code in itself. Upon admission of petition under Section 7 there are various



important duties and functions entrusted to resolution professional and committee of creditors. The resolution professional 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 resolution professional as well as Committee of Creditors. In the negotiations that may be held between committee of creditors 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 on-going concern. After committee of creditors 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 Insolvency and Bankruptcy 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 Insolvency and Bankruptcy 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.’

4. We also take note of the identical position which was expressed by the Supreme Court in *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta [Essar Steel (India) Ltd.*



(CoC) v. *Satish Kumar Gupta*, (2020) 8 SCC 531 : (2020) 219 Comp Cas 97] where the following pertinent observations came to be made (219 Comp Cas p. 182): (SCC pp. 615-616, paras 105, 106 and 107)

‘105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In *SBI v. V. Ramakrishnan* [*SBI v. V. Ramakrishnan*, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458 : (2018) 210 Comp Cas 364] , this Court relying upon Section 31 of the Code has held (210 Comp Cas p. 380): (SCC p. 411, para 25):

“25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.”

106. Following this judgment in *SBI v. V. Ramakrishnan* [*SBI v. V. Ramakrishnan*, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458 : (2018) 210 Comp Cas 364] , it is difficult to accept Shri Rohatgi's argument that that part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to



the guarantees furnished by the erstwhile directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, the National Company Law Appellate Tribunal judgment being contrary to Section 31(1) of the Code and this Court's judgment in *SBI v. V. Ramakrishnan* [*SBI v. V. Ramakrishnan*, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458 : (2018) 210 Comp Cas 364] is set aside.

107. For the same reason, the impugned National Company Law Appellate Tribunal judgment in *Standard Chartered Bank v. Satish Kumar Gupta* [*Standard Chartered Bank v. Satish Kumar Gupta*, (2020) 219 Comp Cas 15 : 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the adjudicating authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. 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. That the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the National Company Law Appellate Tribunal judgment must also be set aside on this count.

5. In view of the aforesaid principles, the successful resolution applicant cannot be foisted with any liabilities other than those which are specified and factored in the resolution plan and which may pertain to a period prior to the resolution plan itself having been approved.”

4. Consequently, and in light of the above, we find ourselves unable to sustain the impugned reassessment action.



5. We, accordingly, allow these two writ petitions and quash the impugned notices referable to Section 148 of the Act dated 28 July 2022 [WP(C) 2666/2023] and 20 March 2023 [WP(C) 4935/2023].

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J

MARCH 04, 2025/akc