$~19

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

\+ W.P.(C) 8475/2024

M S PRIUS COMMERCIAL PROJECTS PVT LTD .....Petitioner

Through: Ms. Ashwini Chandrasekaran, Adv.

versus

THE SALES TAX OFFICER CLASS II AVATO WARD 203 ZONE 11 NEW DELHI 110002 & ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel & Mr. Mayank Kamra, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **31.01.2025**

1. The writ petitioner impugns the order dated 29 April 2024 passed by the respondents for the tax period April 2018 to March 2019 purporting to be under Section 73 of the Central Goods & Services Tax Act, 2017 ["**CGST Act**"]. The challenge is principally addressed in the backdrop of a Resolution Plan which ultimately came to be approved by the National Company Law Tribunal ["**NCLT**"] on 04 January 2021.

2. Learned counsel representing the writ petitioner draws our attention to clause 15.7 of the Resolution Plan, which ultimately came to be approved and which read as follow:

> "15.7 No Person shall be entitled to initiate any Proceedings (including any Tax Proceedings) to enforce any Claims or continue any Proceedings (including any Tax Proceedings) in relation to any

Claims, Debt or liabilities in so far as the Claims, Debt or liabilities relate to the period prior to the Upfront Payment Date, including in connection with any prior transfer of assets, contracts or business by the Corporate Debtor or any of its Subsidiary or Affiliate (whether current or previously existing) and including in relation to or pertaining to Tax whether or not contingent, recorded, assessed, unassessed, disputed, undisputed/ whether or not in relation to or on account of assessment reassessment, notice1 proceedings, compounding, non-compliance, non-filling1 non-preparation of documents, reports including but not limited to pursuant to any surveys or summons and no Person shall claim the lack of knowledge or actual notice of this CIRP as a reason for continuation of any Proceedings against the Corporate Debtor. Such extinguishment shall not affect the claims of the Corporate Debtor in relation to the amounts owed to it.

3. It is in the aforesaid context that we bear in mind the following principles, which came to be rendered by the Supreme Court in **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta [**(2020) 8 SCC 531**]** :

> "107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 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. 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."

4. These principles were reiterated by the Supreme Court in **Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset**

Reconstruction Co. Ltd. [(2021) 9 SCC 657] and which is extracted hereinunder:

> "**Conclusion**
>
> **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."

5. Accordingly, and for the aforesaid reasons, we allow the instant writ petition and quash the impugned order dated 29 April 2024.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 31, 2025/*akc*