IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T). No. 6324 of 2019
With
W.P.(T). No. 6325 of 2019
With
W.P.(T). No. 6326 of 2019
With
W.P.(T). No. 6327 of 2019

Electrosteel Steels Limited,
having its Registered Office at Ranchi,
Principal place of Business at Siyaljori, District Bokaro. ..... Petitioner
(In all matters)

Versus

1. The State of Jharkhand
through Commissioner of State Tax, Ranchi.
2. Joint Commissioner of State Tax (Admn.),
Dhanbad Division, Dhanbad.
3. Deputy Commissioner of State Tax,
Bokaro Circle, Bokaro.
4. Assistant Commissioner of State Tax,
Bokaro Circle, Bokaro.
5. State Bank of India,
Electrosteel Siyaljori Branch, Siyaljori, Bokaro. …. … Respondents
(In all matters)

CORAM : HON'BLE MR. JUSTICE H. C. MISHRA
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : M/s. Dharshan Poddar Mishra, Manav Poddar and Deepak Kumar Sinha, Advocates
For the State : Mr. Manoj Tandon, A.A.G.
For the Respondent Bank : Mr. P.A.S. Pati, Advocate
Mr. Hemant Jain, Advocate

C.A.V. on: 06/02/2020 **Pronounced on: 01/05/2020**

H. C. Mishra, J. - As common questions are involved in all these writ applications, they have been heard together and are being disposed of by this common Judgment.

2. Heard learned counsel for the petitioner, learned Additional Advocate General for the respondent State and learned counsel for the respondent Bank.

3. In all these writ applications, the petitioner Company has challenged the garnishee order bearing No.727 dated 21.11.2019, issued under Section 46 of the Jharkhand Value Added Tax Act, 2005 (hereinafter referred to as the 'JVAT Act'), as contained in Annexure-4 to the writ applications, issued by the respondent No.3, Deputy Commissioner of Commercial Taxes, Bokaro

Circle, Bokaro, to the Respondent No.5, State Bank of India, in its branch situated in the campus of the petitioner Company, asking the respondent Bank to pay into the Government Treasury, the sum of Rs.37,41,41,602/-, on account of tax / penalty due under the JVAT Act, from the petitioner Company, who failed to deposit the taxes for the period from 2011-12 & 2012-13, from the Bank account of the Company. The petitioner Company has also challenged the letter No.733 dated 22.11.2009, as contained in Annexure-5 to the writ applications, issued by the State Tax Officer, Bokaro Circle, Bokaro, to the Respondent Bank, to deposit the amount of Rs.75,57,000/- by way of demand draft in favour of the Deputy Commissioner, Commercial Taxes, Bokaro Circle, Bokaro, in view of the fact that pursuant to the aforesaid garnishee order dated 21.11.2019, the respondent Bank had furnished the information that only the amount of Rs.75,57,000/- was available in the petitioner’s account.

4. The aforesaid order / letter have been directly challenged by the petitioner Company in this Court under Article 226 of the Constitution of India, claiming that the amount, as aforesaid, can no more be realised by the State Government from the Company, in view of the fact that the State Bank of India had filed a Company Petition, being CA (IB) No.361/KB/2017 before the National Company Law Tribunal, Kolkata Bench, Kolkata, (for short 'NCLT'), under the provisions of Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the 'IB Code'), for initiating corporate insolvency resolution process against the Company, which application of the State Bank of India was admitted by the NCLT, and the interim resolution professional was appointed. It is the case of the petitioner Company that the resolution professional filed a resolution plan dated 29.03.2018 of M/s. Vedanta Limited, for the approval by the NCLT under Section 31(1) of the IB Code, which resolution plan had also been accepted by the Committee of Creditors, and the said resolution plan was approved by the NCLT by order dated 17.04.2018. The resolution plan was also approved by the National Company Law Appellate Tribunal, New Delhi, (for short 'NCLAT'), on 10.8.2018. According to the petitioner's case, the matter had been taken to the Hon'ble Apex Court by some operational creditors, in Civil Appeal Nos.1133-9081 of 2019, in which the Hon’ble Apex Court, vide order dated 27.11.2019, sent the matters back to the NCLT, observing "We make it clear that the implementation of the Resolution Plan is not stayed". According to the petitioner's case, upon approval of the Resolution Plan, M/s. Vedanta Limited took over the management of the petitioner Company on

04.06.2018. According to the petitioner, since no claim was made by the State Government as regards the aforesaid tax liability in the corporate insolvency resolution process, the claim of the Government is now barred under Section 31 of the IB Code, and the amount cannot be realised by the State Government, as the State Government shall also be deemed to be the operational creditor under Section 5 (20) of the IB Code. According to the petitioner's case, once the resolution plan was approved, the tax liability of the petitioner Company which was not claimed by the State Government during the corporate insolvency resolution process, stood completely barred under Section 31 of the IB Code.

5. Admittedly, in the present writ applications, there is no challenge to the tax liabilities of the petitioner Company, though the re-assessment orders dated 17.08.2018 passed by the Assessing Authority, i.e., Assistant Commissioner of State Tax, Bokaro Circle, Bokaro, have been brought on record as Annexures-3 to the writ applications, pursuant to which the impugned garnishee order has been issued. Learned counsel for the petitioner has vehemently argued that the State Government, whose tax dues could not be paid by the petitioner Company, was also the 'operational creditor' within the meaning of Section 5 (20) of the IB Code, but no claim was made by the State Government during the corporate insolvency resolution process, and accordingly, upon an approval of the resolution plan by the NCLT, any claim of the State Government stood barred under Section 31 of the IB Code.

6. It is submitted by learned counsel for the petitioner that in spite of the fact that the claim of the State Government now stands barred, the garnishee order has been issued by the Deputy Commissioner of Commercial Taxes, Bokaro Circle, Bokaro, which is absolutely illegal, void *ab-initio* and wholly without jurisdiction and cannot be sustained in the eyes of law. As the resolution plan has already been approved by the NCLT, and the management of the petitioner Company has been taken over by M/s. Vedanta Limited, the resolution plan is now binding upon the corporate debtor, i.e., the petitioner Company, and its creditors, including the State Government, to whom any debt had accrued under any law, including under the JVAT Act, by virtue of Section 31 of the IB Code.

7. It is pointed out by learned counsel for the petitioner, that Section 238 of the IB Code has an overriding effect on all other laws for the time being in force, which reads as follows:-

***"238**. The provisions of this Code shall have effect,*

notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. "

8. In support of his contention, learned counsel for the petitioner Company has placed reliance upon the decision of the Hon'ble Apex Court in **Innovative Industries Limited Vs. ICICI Bank & Anr**, reported in *2018 (1) SCC 407,* wherein it has been held that IB Code is a Parliamentary Law and is an exhaustive Code on the subject matter of insolvency in relation to the corporate entities.

9. Learned counsel for the petitioner has also submitted that even the tax liabilities payable to the Government would come within the meaning of the expression "operational debt" under Section 5 (21) of the IB Code, making the Government an "operational creditor" in terms of Section 5(20) thereof, and shall be governed by the approved resolution plan. In support of his contention learned counsel has placed reliance upon the decision of the Hon'ble Apex Court in **Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors.,** reported in *Manu/SC/1661/2019*, wherein it has been held as follows:-

"36. ----------. Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5) (c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore, the jurisdiction of the NCLT delineated in Section 60(5)cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" Under Section 5 (21), making the Government an "operational creditor" in terms of Section 5(20). The moment the dues to the Government are crystalized and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by theAdjudicating Authority, namely the NCLT.)" (Emphasis supplied).

10. In this connection learned counsel has further placed reliance upon the decision of the Hon'ble Apex Court in **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.,** reported in (*2019) 4 SCC 17,* wherein it is held as

follows:-

> *"42. A perusal of the definition of "financial creditor" and "financial debt" makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an "operational debt" would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority."*
>
> *(Emphasis supplied).*

11. Learned counsel has also placed reliance upon an order of the Hon'ble Apex Court in **Pr. Commissioner of Income Tax Vs. Monnet Ispat & Energy Ltd.** (Special Leave to Appeal (c) No.6483 of 2018, decided on 10.08.2018), wherein, similar view has been taken by the Apex Court, holding as follows:-

> *"Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act.*
>
> *We may also refer in this connection to Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. & Ors. (2000) 5 SCC 694 and its progeny, making it clear that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons."*

12. It is submitted by the learned counsel for the petitioner that had the claim of the State Government been made at the stage of the corporate insolvency resolution process, even in that case, the claim of the State Government could have been settled only in the manner prescribed in the resolution plan as approved by the Adjudicating Authority namely the NCLT, but in the present case, as no such claim was made by the State Government at the time of corporate insolvency resolution process, the claim of the State Government now stands completely barred under Section 31 of the IB Code, and after the approval of the resolution plan, no fresh claim can be entertained. In support of this connection, learned counsel has placed reliance upon the decision of the Hon'ble Apex Court in **Committee of Creditors of Essar Steel India Limited, through authorized Signatory Vs. Satish Kumar Gupta & Ors.,** reported in *2019 SCC OnLine SC 1478,* wherein it has been held as

follows:-

> *"88. For the same reason, the impugned NCLAT judgment 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 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, the NCLAT judgment must also be set aside on this count."* (Emphasis supplied).

13. Placing reliance on these decisions, learned counsel concluded that the garnishee order issued by the respondent No.3, Deputy Commissioner of Commercial Taxes, Bokaro Circle, Bokaro, is in teeth of the terms of the approved resolution plan, and the garnishee order is wholly without jurisdiction and void *ab-initio* and cannot be sustained in law.

14. *Per contra*, learned Additional Advocate General has opposed the prayer and has submitted that the main order of re-assessment is not under challenge in these writ applications by the petitioner. Learned AAG has drawn our attention towards the statement made in the supplementary affidavit filed by the petitioner, in which, it is stated that without prejudice to the present writ applications, the petitioner by way of abundant precaution has filed revision petition along-with stay petition before the Revisional Authority, i.e., the Commissioner of State Tax, Jharkhand. Learned AAG, accordingly, submitted that the petitioner has already availed the alternative remedy before the Revisional Authority and accordingly, the present writ applications cannot be maintained in the eyes of law and are fit to be dismissed on this score alone.

15. Learned AAG has also drawn our attention towards Section 79 of the JVAT Act, and has submitted that the re-assessment orders were subject to appeal upon deposit of 20% of the tax assessed, which remedy has not availed by the petitioner Company, in order to escape the 20% tax liability, and as such,

these writ applications cannot be entertained on this score as well. It is submitted by learned AAG that the case of the petitioner does not fall within the categories of cases in which the alternative remedy is not a bar for exercising the writ jurisdiction. In support of his contention learned AAG has placed reliance upon the decision of the Hon'ble Apex Court in **Harbanslal Sahnia & Anr. Vs. Indian Oil Corpn. Ltd. & Ors.,** reported in *(2003) 2 SCC 107*, laying down the law as follows:-

> *"7. ----------. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. ----------."*

16. It is also pointed out by the learned AAG that admittedly, the petitioner Company had collected the tax from its purchasers / customers in the name of VAT, but has not deposited the same in the State Exchequer, thus, amounting to criminal misappropriation of the Government money entrusted to the petitioner Company by its purchasers / customers, and has thus committed the offence of criminal breach of trust.

17. Learned AAG has also pointed out that in the present case, the corporate insolvency resolution process was started on 21.07.2017. The right of the State Government to recover the tax from the petitioner Company accrued in the years 2011-12 & 2012-13. The IB Code itself was enacted in the year 2016 and accordingly, the tax liability of the petitioner, which the petitioner Company ought to have discharged in the years 2011-12 and 2012-13, cannot be said to be affected by the IB Code.

18. Learned Additional Advocate General has also pointed out that Section 31 of the IB Code clearly states that the approved resolution plan shall be binding on the stake-holders involved in the resolution plan. It is submitted that the State Government was never involved in the resolution process and there was a valid reason for the same, inasmuch as, the notice required to be issued under Section 13 of the IB Code, which ought to have been issued in the State of Jharkhand, where the petitioner Company is having its registered office as well as the principal place of business, but the said notice was never published in the State of Jharkhand, rather the notice which has been brought on record as Annexure-7 to the supplementary affidavit filed by the petitioner,

clearly shows that it was published only in the Kolkata Edition of Business Standard on 24.07.2017. Learned AAG accordingly, submitted that since the notice was never published in the State of Jharkhand, the State authorities had no knowledge of any such corporate insolvency resolution process and accordingly, the State Government was deprived from making any claim in the corporate insolvency resolution process. Learned AAG thus, submitted that the writ applications are fit to be dismissed on this score as well.

19. The respondent State Bank of India has also filed its counter affidavit, and it is pointed out by learned counsel for the respondent Bank from the counter affidavit that pursuant to the garnishee order, the Bank account of the petitioner has been freezed, and the following amounts have already been remitted to the State Exchequer:-

(a) Rs. 75.67 lacs on 28.11.2019,

(b) Rs. 12.00 lacs on 02.12.2019 and

(c) Rs 61.00 lacs on 3.12.2019.

20. In reply, learned counsel for the petitioner Company has placed stress upon paragraph 3.6 of the resolution plan, which has been brought on record as Annexure-1 to the writ applications, wherein it is stated that all the claims of taxes and liabilities whether admitted or not, due or contingent, whether or not set out in the provincial balance sheet, shall stand extinguished by virtue of the order of the NCLT, approving the resolution plan, and the Company shall not be liable to pay any tax against such dues, and such liabilities shall stand extinguished and be considered as not payable by the Company by virtue of the order of the NCLT, approving the resolution plan. Learned counsel has submitted that the resolution plan of the company, now stands approved up to the Hon’ble Apex Court, by virtue of the order dated 27.11.2019 passed in Civil Appeal Nos.1133-9081 of 2019. Learned counsel accordingly, reiterated that the taxes, even if accrued in the years 2011-12 and 2012-13, can no more be realized from the petitioner Company after approval of the resolution plan by the NCLT.

21. Having heard the learned counsels for both sides and upon going through the record, we find that in the present cases, the State Government shall fall within the definition of 'operational creditor', and the taxes payable by the petitioner shall fall within the definition of 'operational debt', as defined in the IB Code as follows:-

"Section 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;

Section 5 (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;"

As such, there can be no doubt that the case of the petitioner shall be governed by the provisions of the IB Code.

22. We however, find force in the submissions of the learned Additional Advocate General that the tax amount, which had been sought to be realised from the petitioner Company, had already been realised by the petitioner Company from the customers which was to be deposited in the Government Exchequer, but that having not been done by the Company and the amount having been utilized for its business purposes, throughout after the years 2011-12 and onwards, shall certainly amount to criminal misappropriation of the Government money by the Company, and the State Government is entitled to realize the same with the penalty due thereon.

23. There is yet another aspect of the matter. The amount of VAT must have already been realised by the petitioner Company from the customers. In that view of the matter, it is debatable whether the amount of VAT shall be covered by the expressions "*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",* so as to bring it within the definition of *"operational debt",* as defined in the IB Code. This Tax liability can very well be treated as the amount of tax already realised by the petitioner Company from its customers, on behalf of the State Government, and not the direct debt of the petitioner Company towards the State Government, in which case the tax liabilities of the petitioner Company, for realising which the impugned garnishee order has been issued, may not come within the definition of *"operational debt",* as defined in the IB Code. The decisions cited by learned counsel for the petitioner in **Embassy Property Developments Pvt. Ltd.'s** case *(supra)* and in **Monnet Ispat and Energy Ltd.'s** case *(supra),* are of no help to the petitioner Company, as they related to Income Tax dues, which were the direct debts of the corporate debtors in those cases.

24. We also find from the record that the re-assessment orders were passed on 17.08.2018 as contained in Annexure-3 to the writ applications, by

which date the resolution plan was already approved by the NCLT on 17.04.2018, but the same was never brought to the knowledge of the Commercial Tax officials by the Company, even though the petitioner Company was given a hearing by the Assessing Authority, i.e., respondent No. 4 Assistant Commissioner of State Tax, Bokaro Circle, Bokaro, before passing the re-assessment orders.

25. We also find from the record that the notice under Section 13 of the IBC Code was never published in the State of Jharkhand, rather the notice was published only in the Business Standard of Kolkata Edition on 24.07.2017 as contained in Annexure-7 to the supplementary affidavit. There is no denial to the fact that such notice was never published in the State of Jharkhand.

26. Section 13 of the IB Code reads as follows:-

> *"13. (1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order—*
>
> *(a) declare a moratorium for the purposes referred to in section 14;*
>
> *(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and*
>
> *(c) appoint an interim resolution professional in the manner as laid down in section 16.*
>
> *(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional."*

27. The detailed procedure for public announcement, as required under Section 13(1)(b) of the IB Code, is provided in Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016. Even the notice which has been brought on record as Annexure-7 to the supplementary affidavit filed by the petitioner, shows that it was published under this provision. Relevant portion of Regulation 6 thereof reads as follows:-

> *"6. Public announcement. (1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.*
>
> *Explanation: 'Immediately' means not later than three days from the date of his appointment.*
>
> *(2) The public announcement referred to in sub-regulation (1) shall:*
>
> *(a) be in Form A of the Schedule;*

(b) be published-

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations; ----------."

28. Thus, a conjoint reading of Section 13(1)(b) of the IB Code read with Regulation 6 aforesaid, clearly shows that the public announcement had to be made in the newspapers with wide circulation at the location of the registered office and principal office, of the petitioner Company. Admittedly, the registered office of the petitioner Company is at Ranchi, and its principal place of business is in the District of Bokaro, both of which are situated in the State of Jharkhand, but no public announcement of the corporate insolvency resolution process was made in the State of Jharkhand. We are conscious of the fact that since the resolution plan is approved by the NCLT, and not interfered with even by the Hon'ble Apex Court as pointed out above, we are not required to look into the legality or otherwise of the resolution process, but the fact remains that due to non publication of the public announcement of the corporate insolvency resolution process in the State of Jharkhand, the authorities of the Commercial Taxes Department had no occasion to have any knowledge about the corporate insolvency resolution process of the Company, and they were deprived of making their claim before the interim resolution professional. Since the State Government was not involved in the resolution process, the resolution plan cannot be said to be binding on the State Government under Section 31 of the IB Code, relevant portion of which reads as follows:-

"31. *(1)– If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan;"* (Emphasis is ours).

29. We also find from the record that though it is the specific case of the petitioner that the management of the petitioner company has been taken over by M/s Vedanta Limited on 04.06.2018, but the fact remains that M/s. Vedanta Limited is not the petitioner before us, rather it is the original Company which had the tax liabilities to be discharged in the years 2011-12 and 2012-13, after having realized the amount from its customers, is only the petitioner before us. We are of the clear view that the petitioner Company has not approached this Court with clean hands.

30. In that view of the matter, we are not inclined to entertain these writ applications, even though there is a resolution plan in favour of the petitioner Company, approved by the Adjudicating Authority, i.e., the NCLT, for the simple reason that it was never brought to the knowledge of the Commercial Tax authorities of the State of Jharkhand that the corporate insolvency resolution process had been initiated against the petitioner Company, and no public announcement of the corporate insolvency resolution process was made in the State of Jharkhand. Section 31 of the IB Code clearly lays down that the approved resolution plan shall be binding only on those stakeholders who were involved in the resolution plan. Admittedly, the State Government was never involved in the corporate insolvency resolution process, and as such, the resolution plan cannot be said to be binding on it.

31. For the aforesaid reasons, we find that the writ petitioner is not entitled to any relief whatsoever, There is no merit in these writ applications and all these writ applications are accordingly, dismissed.

(H. C. Mishra, J.)

Deepak Roshan, J.:- I have gone through the detailed Judgment authored by my esteemed Brother H.C. Mishra, J. I fully subscribe to the views expressed therein, but I also wish to add a few reasons of my own, which are as follows:-

(i). Much has been argued by the learned counsel for the petitioner Company that since no claim was made by the respondent State as regards the tax liability in the corporate insolvency resolution process, the claim of the tax authority is barred under Section 31 of the IB Code. In this regard, even at the cost of repetition it is pertinent to mention few dates. The petitioner Company was originally assessed to tax for the period 2012-13 u/s 35(6) of the VAT Act vide order dated 21.01.2016. The said assessment order was challenged by the

petitioner Company by way of revision, being Revision Case No. CC(S)-311 of 2016. The revision case was disposed on 11.08.2016 and the assessment order dated 21.01.2016 was set aside and the case was remanded back to lower Court for passing the order afresh. Subsequently, the revised assessment order was passed on 17.08.2018. Thus, from 11.08.2016 till 17.08.2018, there was no dues standing against the petitioner Company and as such there was no occasion to make any claim by the respondent State as regards the tax liability in the corporate insolvency resolution process and / or the moratorium period which starts from 21.07.2017 when the application u/s 7 of the IP Code was admitted till the date of approval of the resolution plan by the NCLT i.e. on 17.04.2018.

(ii). It is also pertinent to mention here that Section 31(1) of the IB Code, 2016 was amended vide IBC (Amendment) Act, 2019, to make the approved resolution plan binding on the Government Authorities in relation to the statutory dues. It is pursuant to this amendment that the rights of the Government Authorities for statutory dues were affected and such right was made subject to the approved resolution plan. The said amendment was made effective from 16.08.2019, which is prospective in nature, and no express retrospective effect was given to the said amendment. The said amendment takes away a substantive right of the Government Authorities in relation to the statutory dues and thus any interpretation, which shall give a retrospective effect to the said amendment, would be unreasonable and unjust.

(iii). In the present case the resolution plan of the petitioner Company was approved by the NCLT vide its order dated 17.04.2018 which is much prior to the aforesaid amendment. Accordingly, the said amendment in Section 31(1) of the IB Code, 2016 shall not apply to the resolution plan of the petitioner Company. Therefore, the assessment order dated 17.08.2018 which was passed by the respondent Commercial Tax Authorities, cannot be made subject to the approved resolution plan of the petitioner Company.

I accordingly, agree with the Judgment authored by Brother H.C. Mishra, J.

(Deepak Roshan, J.)

Jharkhand High Court, Ranchi.
Dated the 1st of May, 2020.
N.A.F.R/*BS*/-