

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Excise Appeal No.11518 of 2017**

Excise Misc. Application (ORS) No. 10214 of 2022

(Arising out of OIO-SUR-EXCUS-002-COM-101-102-16-17 dated 31/03/2017 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

**C.C.E. & S.T.-SURAT-II**

NEW C.Ex BUILDING...OPP. GANDHI BAUG,  
CHOWK BAZAR,  
SURAT, GUJARAT-395001

**.....Appellant**

*VERSUS*

**ARCELORMITTAL NIPPON STEEL INDIA LTD**

Hazira, Surat  
Surat, Gujarat

**.....Respondent**

**WITH**

- **Customs Misc. Application (ORS) No. 10210 of 2022 in Customs Appeal No.11378 of 2017 (ARCELORMITTAL NIPPON STEEL INDIA LTD.)**
- **Customs Misc. Application (ORS) No. 10215 of 2022 in Customs Appeal No.11519 of 2017 (ARCELORMITTAL NIPPON STEEL INDIA LTD.)**
- **Excise Misc. Application (ORS) No. 10370 of 2022 in Excise Appeal No.10760 of 2017 (ARCELORMITTAL NIPPON STEEL INDIA LTD.)**

(Arising out of OIO-SUR-EXCUS-002-COM-102-16-17 dated 31/03/2017 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

(Arising out of OIO-SUR-EXCUS-002-COM-101-102-16-17 dated 31/03/2017 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

(Arising out of OIO-SUR-EXCUS-002-COM-062-16-17 dated 30/12/2016 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

**APPEARANCE:**

Shri Vishal Agarwal & Mrs. Dimple Gohil, Advocate for the Assessee

Shri Ajay Jain & Shri Deepak Kumar (Special Counsels) for the Respondent  
Shri Prabhat Rameshwaram, Additional Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. A/ 10229-10232 /2023**

DATE OF HEARING:10.01.2023  
DATE OF DECISION: 07.02.2023

**RAMESH NAIR**

01. Shri Vishal Agarwal, learned counsel appearing on behalf of the assessee M/s. Arcelormittal Nippon Steel India Ltd. submits that by the miscellaneous applications, the assessee is seeking disposal of the appeals in the light of NCLT order whereby, the resolution plan has been approved in favour of M/s. Arcelormittal Nippon Steel India Ltd. He submits that as per the NCLT order, all the government dues shall stand extinguished and no government dues including the dues involved in the present appeals is recoverable.

02. Shri Prabhat Rameshwaram, learned Additional Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

03. We have carefully considered the submissions made by both the sides and perused the records. As regard the pending appeals wherein, the IBC proceedings have been concluded by NCLT, we in various following decisions passed the order.

- M/s. ULTRATECH NATHDWARA CEMENT LIMITED- 2022(10) TMI 936-CESTAT AHMEDABAD
- ALOK INDUSTRIES vide Final Order No. A/11265/2022 dated 20.10.2022
- RUCHI SOYA INDUSTRIES LTD vide Final Order No. A/ 11272-11276 /2022 dated 20.10.2022

In the identical situation, we have passed the orders, one of the order in the case of ALOK INDUSTRIES (supra) is reproduced below:-

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the NCLT has passed an order by approving resolution plan of the company M/s. Alok Industries Limited in favor of JM Financial Asset Reconstruction Company Limited and Reliance Industries Limited, who are the resolution applicant. The relevant terms of the resolution plan are reproduced below:-

**"3.3 Operational Creditors (including the Central Government, State Government or any local authority)**

**3.3.1 Amount to be paid to Operational Creditors pursuant to this Plan**

As per the Information Memorandum, the liquidation value of the Company is Rs. 4433,00,00,000 (Rupees Four Thousand Four Hundred Thirty Three Crores only), which is less than the sum of Estimated CIRP Costs and Outstanding Financial Debt, therefore, the liquidation value available to Operational Creditors (other than employees and workmen who have been dealt with separately under section 3.4 below) is NIL. **Accordingly, no amounts are proposed to be paid under this Plan to the Operational Creditors** (other than (i) employees and workmen who have been dealt with separately under Section 3.4 below; and (i) the dues owed by the Company to certain Operational Creditors (to each of whom the Company, as on the Insolvency Commencement Date, owes upto Rs. 3,00,000/- (Rupees Three lakhs) and whose details are set out in Annexure 9), which dues aggregates to Rs. 4,83,47,321/- (Rupees Four Crores Eighty Three Lakhs Forty Seven Thousand Three Hundred Twenty One). If any further claims of Operational Creditors (other than employees and workmen who have been dealt with separately under Section 3.4 below), relating to the period prior to the Closing Date arise and/or are made and/or are admitted, then the amounts payable under this Plan to the Operational Creditors (other than (i) employees and workmen who have been dealt with separately under Section 3.4 below; and (ii) the dues owed by the Company to certain Operational Creditors (to each of whom the Company, as on the Insolvency Commencement Date, owes up to Rs. 3,00,000/- (Rupees Three Lakhs) and whose details are set out in Annexure 9)), which aggregates to Rs. 4,83,47,321/- (Rupees Four Crores Eight Three Lakhs Forty Seven Thousand Three Hundred Twenty One) **shall remain NIL, and shall not increase.**

**Pursuant to the foregoing, the Company shall have no Liability towards any Operational Creditors with regard to any claims (as defined under the IBC) relating in any manner to the period prior to the Closing Date. All such Liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled, with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the Operational Creditors (whether by way of guarantee, bank guarantee, letters of credit or otherwise) shall immediately, irrevocably and unconditionally stand released and discharged, and the**

**Operational Creditors shall deem to have waived all rights to invoke or enforce the same.**

**(Emphasis supplied)**

- 3.3.2.....**
- 3.3.3.....**
- 3.3.4.....**

**3.3.5 Treatment of claims under Applicable Laws (including Taxes)**  
(i) All claims that may be or that arise against the Company in relation to any payments required to be made by the Company under Applicable Law (including Taxes), or in relation to any breach, contravention or non compliance of any Applicable Law (including criminal laws), whether or not such claim was notified to or claimed against the Company at such time, and whether or not such Governmental Authority was aware of such claim at such time, in relation to the period prior to the Closing Date, is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore, the full amount of such claims shall be deemed to be owed and due as of the Closing Date, the liquidation value of which is NIL and therefore, no amount is payable in relation thereto.

(II) In accordance with the foregoing, all claims (final or contingent, whether dispute or undisputed, and whether notified to or claimed against the Company) of all Governmental Authorities (including in relation to Taxes, and all other dues and statutory payments to any Governmental Authority), relating to the period prior to the Closing Date, shall stand fully and finally discharged and settled.

(iii) All claims that may be made against the Company in relation to any payments required to be made by the Company under Applicable Law, or in relation to any breach, contravention or non-compliance of any Applicable Law (whether or not such claim was notified to or claimed against the Company at such time, and whether or not such Government Authority was aware of such claim at such time), shall be deemed to be owed and due as of the Closing Date, and shall immediately, irrevocably and unconditionally stand abated, settled and extinguished. No Governmental Authority shall have any further rights or claims against the Company, in respect of the period prior to the Closing Date and/or in respect of such amounts.

**3.3.6 Failure to Submit Claims or Rejected Claims**

(i) The Resolution Professional had issued a public notice dated July 19, 2017 in accordance with the IBC, inviting all creditors of the Company to submit their proof of claims to the Resolution Professional on or prior to August 01, 2017. The Information Memorandum. and information uploaded to the virtual data-room from time to time, contains details of claims made by all creditors of the Company, including Financial Creditors and Operational Creditors, which have been admitted by the Resolution Professional. Further, under the CIRP Regulations, all creditors are required to submit their proof of claim prior to the approval of the Plan by the CoC. We assume that all persons that have any claim (s) against the Company (including Financial Creditors, Operational Creditors, Other Creditors, Governmental Authorities, persons who have paid any advances to the Company against supply of goods or services by the Company, and persons in respect of whom credit balances were written-back by the Company in the years ended March 31, 2016, March 31, 2017 and March 31, 2018 have all filed their claims and all verifiable claims as on the date of approval of this Plan by the CoC, have been admitted by the Resolution

*Professional and are disclosed in the Information Memorandum, provided that nothing contained herein shall result in an increase in the Total Financial Outlay proposed under this Plan.*

*(ii) In the event any person that has any claim (s) against the Company (including Financial Creditors, Operational Creditors, Other Creditors, Governmental Authorities, or otherwise), has not submitted its claims) (whether or not it was aware of such claim at such time), or if the claim(s) filed by any person has been rejected and/or not been admitted by the Resolution Professional (including any claim against the Company from GAIL (India) Limited arising directly or indirectly under, out of, or in relation to the gas sale agreement dated May 27, 2013 entered into between GAIL (India) Limited and the Company), then: (a) all such obligations, claims and liabilities of the Company (whether final or contingent (whether crystallized or not), whether disputed or undisputed, and whether or not notified to or claimed against the Company; (b) all outstanding disputes or legal proceedings in respect of such claims; and (c) all rights or claims of such persons against the Company; in each case, relating to the period prior to the Closing Date, shall immediately, irrevocably and unconditionally stand extinguished and waived on the Closing Date, and the Company shall have no Liabilities in respect of such claim(s). Provided however any rights or claims of the Financial Creditors with respect to Existing Promoter Guarantees can continue against such guarantors.*

### **3.3.7 No action by Operational Creditors**

*Pending the occurrence of the Closing Date, no Operational Creditors shall be entitled to take, initiate or continue any steps or proceedings against the Company or its assets whether by way of demand, legal proceedings, alternative determination process, the levying of distress, in any jurisdiction whatsoever for the purpose of obtaining payment of any Liability, or for the purpose of placing the Company into liquidation or any analogous proceedings."*

*From the above terms of the resolution plan approved by the NCLT, it prima facie appears that the respondent is not liable to pay any dues. However, this tribunal is not competent to decide regarding the recovery of any dues. It is the department who has to decide whether any dues is recoverable or otherwise, in the light of the resolution plan approved by the NCLT.*

*4.1 From the above facts, we find that as per the resolution plan approved by the NCLT and in the light of Hon'ble Supreme Court judgment in the case of Ghanashyam Mishra & Sons Pvt. Ltd.-2021 SCC Online SC 313, it prima facie appears that the adjudged dues cannot be recovered by the department however, this issue has to be decided by the department and not by this tribunal. For this reason, that firstly, there is no provision made in the Customs and Central Excise Act to give effect of NCLT proceedings. This tribunal being creature under the*

*Customs Act, even though the Insolvency and Bankruptcy Code have over riding effect over all the other acts, in absence of any explicit provision under the Customs/Central Excise Act, this tribunal cannot decide finally whether the adjudged amount can be recovered by the department or otherwise. This issue has to be resolved by the appellant.*

*Moreover, the learned AR submitted a letter dated 19.05.2022 issued by Additional Commissioner (Legal) wherein, the Additional Commissioner stated as under:-*

*"As the NCLT, Ahmedabad has decided the matter vide Order 08.03.2019 and therefore, all the government dues prior to 08.03.2019 stand extinguished and no demand or recovery proceedings can be initiated against them."*

*05. In this position, we are of the view that at present the appeal became infructuous accordingly, we dismiss the appeal as infructuous. Both the sides have liberty that in case of any amicable resolution is not arrived at between the appellant and respondent to approach this tribunal to revive the present appeal and be decided on merit if required. The appeal is disposed as infructuous. MA also stand disposed of.*

*06. Having decided the appeal as above, we note that IBC proceedings are being initiated against many companies who are either appellant or respondent in the appeals pending before this tribunal. We observed that the revenue-department has no proper guideline as to what stand is to be taken in a case where the IBC proceedings is in progress before NCLT/NCLAT or at higher forum. The assessee against whom the IBC proceedings are initiated invariably approach this tribunal through miscellaneous application for disposing of the appeals in the light of the NCLT's orders. However, in the absence of any guideline by the CBIC, the departmental representative are unaware as to what stand is to be taken in such cases. Therefore, we are of the view that the Central Board of Indirect Taxes & Customs may consider issuing guideline/procedure for dealing with the case before this tribunal wherein, against the assessee's company IBC proceeding has been initiated. Copy of this order be sent to the Chairman-CBIC by speed post.*

We, following our above order, are of the considered view that since the IBC proceedings have been concluded in favour of M/s. Arcelormittal Nippon Steel India Ltd., these appeals shall stand infructuous accordingly, we

dismiss these appeals as infructuous. Both the sides have liberty, in case of any amicable resolution is not arrived at between the appellant and the respondent, to approach to this tribunal to revive the present appeals and the same shall be decided on merit, if required. CO and Miscellaneous applications also stand disposed of.

(Pronounced in the open court on 07.02.2023 )

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

Mehul