CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 58682 of 2013

[Arising out of Order-in-Original No. 01/ST/Commr/DM/RTK/2013-14 dated 11.04.2013 passed by the Commissioner of Central Excise, Rohtak]

Technopak Advisors P Ltd **..........Appellant (s)**
4th Floor, Tower A, Building No. 8,
DLF Cyber City, Phase II,
Gurgaon, Haryana

VERSUS

Commissioner of CE & ST, Rohtak **........Respondent (s)**
SCO No. 6-8 & 10, Sector 1,
HUDA Market,
Rohtak, Haryana 124001

APPEARANCE:
Present for the Appellant : Sh. Manish Khurana, Advocate
Present for the Respondent : Sh. Pawan Kumar and Sh. Aneesh Dewan, Authorised Representatives

CORAM :
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60318/2024

Date of Hearing: 06.06.2024
Date of Decision: 06.06.2024

Per : S. S. GARG

The present appeal is directed against the impugned order dated 11.04.2013 passed by the Commissioner of Central Excise, Rohtak, whereby the learned Commissioner has passed the following order :

i) I confirm the demand of service tax amounting to Rs.6,66,83,523/- (Rupees Six Crores Sixty Six Lakhs Eighty Three Thousand Five Hundred Twenty Three only) including

Education Cess of Rs.12,96,837/- and Secondary & Higher Education Cess of Rs.5,44,719/- against M/s Technopak Advisors (P) Ltd, 4th Floor, Tower-A, Building No. 8, DLF Cyber City, Phase-II, Gurgaon and order its recovery from them under proviso to Section 73(1) of Finance Act, 1994.

(ii) I confirm the recovery of interest at appropriate rates from M/s Technopak Advisors (P) Ltd, 4th Floor, Tower-A, Building No. 8, DLF Cyber City, Phase-II, Gurgaon on the amount of Service Tax confirmed for recovery as mentioned at Sr. No. (i) above under the provisions of Section 75 of the Finance Act, 1994 as amended.

(iii) I refrain from imposing any penalty upon M/s Technopak Advisors (P) Ltd, 4th Floor, Tower-A, Building No. 8, DLF Cyber City, Phase-II, Gurgaon under Section 76 of the Finance Act, 1994 in view of proviso to sub-section (1) of Section 78 of the Finance Act, 1994 which provides that if penalty is payable under Section 78, the provisions of Section 76 shall not apply.

(iv) I impose a Penalty of Rs.5,000/- (Rupees five thousand only) upon M/s Technopak Advisors (P) Ltd, 4th Floor, Tower-A, Building No. 8, DLF Cyber City, Phase-II, Gurgaon under the provisions of Section 77 of the Act ibid for various acts of omissions and commissions as discussed in foregoing Paras.

(v) I impose a penalty of Rs.6,66,83,523/- (Rupees Six Crores Sixty Six Lakhs Eighty Three Thousand Five Hundred Twenty Three only) upon M/s Technopak Advisors (P) Ltd, 4th Floor, Tower-A, Building No. 8, DLF Cyber City, Phase-II, Gurgaon under the provisions of Section 78 of the Finance Act, 1994. They could, however, avail of the benefit of the proviso to Section 78 wherein it had been laid down that if the Assessee deposits the entire amount of Service tax along with the interest within 30 days from the date of the communication of the order, then the penalty amount under Section 78 shall be reduced to 25% provided the reduced penalty was also paid within the same time frame as specified above.

Aggrieved by the said order, the appellant filed the present appeal before us.

2. Heard both the sides and perused the material on record.

3. Sh. Manish Khurana, the learned Counsel appears for the appellant and submits that M/s Safe Capital Services Private Limited, the creditor of the appellant approached the NCLT, New Delhi Bench and the NCLT has approved the Resolution Plan vide its order dated 08.02.2021. He further submits that once the Resolution Plan has been approved, the present appeal needs to be abated in view of the law laid down by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra & Sons Pvt Ltd vs. Edelweiss Asset Reconstruction Company Ltd & Ors*** in ***Civil Appeal No. 8129 of 2019***.

4. On the other hand, the learned Authorized Representative for the Revenue has also admitted the factum of the Resolution Plan

approved by the NCLT, New Delhi bench vide its order dated 08.02.2021.

5. During the pendency of this appeal, the appellant faced financial difficulties and an application was filed by M/s Safe Capital Services Private Limited, the financial creditor of the appellant under Section 7 of the Insolvency and Bankruptcy Code, 2016 for recovering debts due from the appellant's company and New Delhi Bench of the NCLT initiated Corporate Insolvency Resolution Process (CIRP) against the appellant's company vide its order dated 21.08.2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016. Accordingly, a Resolution Plan was floated by the Resolution Professional for approval of the committee of creditors. The Resolution Plan submitted before NCLT, was approved by NCLT vide its order dated 08.02.2021 and the Resolution Plan became effective from this date i.e. 08.02.2021.

6. After considering the submissions made by both the sides and perusal of the Resolution Plan, we find that the identical matter has been considered by two coordinate benches of the Tribunal; Mumbai Bench vide order dated 12.05.2023 in the case of ***M/s Jet Airways (India) Limited vs. Commissioner of Service Tax-IV*** and Hyderabad Bench in the case of ***Icomm Tele Ltd. vs. Commissioner of Central Tax, Puducherry***. It is pertinent to refer the findings of Mumbai Bench of the Tribunal in the case of ***M/s Jet Airways (India) Limited*** (supra) which was disposed of vide its order dated 12.05.2023 in Appeal Nos. ST/86949, 87287/2015 and it was ordered that the appeals stand abated once the Resolution Plan has been

approved by NCLT and the CESTAT has become *functus officio* in the matters relating to this appeal. It is pertinent to reproduce the relevant findings of the coordinate benches on the issue which are reproduced herein below:-

> *"**4.** We also find that the matter is no more res integra, as the Hon'ble Supreme Court in Civil Appeal No. 8129 of 2019, in the case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. vide judgement dated 13.04.2021, had decided the settled position of law, as under:-*
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> *"2. The short but important questions, that arise for consideration in this batch of matters, are as under:-*
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> *(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'I&B Code')?*
>
> *(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/ declaratory or substantive in nature?*
>
> *(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by theadjudicating authority?*
>
> *.....*
>
> *<u>CONCLUSION</u>*
>
> *95. In the result, we answer the questions framed by us as under:*
>
> *(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (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, allsuch 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;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effectivefrom the date on which I&B Code has come into effect;

(iii) 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 the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

5. *We also find that CBIC has vide Instruction No.1083/04/2022-CX9 dated 23.05.2022 has laid down the guidelines in the form of Standard Operating Procedure (SOP) for handling the NCLT cases by the department, and reiterated the legal position that as operational creditors, GST and Customs authorities are required to submit their claims against the corporate debtors when the corporate insolvency and resolution process has been initiated. Once the Resolution plan is approved by NCLT, no demands can be raised on the Resolution Applicant. The relevant paragraph of said instructions is extracted below:*

"C.B.I. & C. Circular No. 1083/04/2022-CX.9
F. No. 296/286/2021-CX. 9

Government of India

Ministry of Finance (Department of Revenue)
Central Board of Indirect Taxes & Customs, New Delhi

Dated 23.05.2022

To All Principal Chief Commissioner(s)/ Chief Commissioner(s) of Customs/ Customs (Preventive)/ Customs & CGST, All

Principal Chief Commissioner(s)/ Chief Commissioner(s) of CGST, Webmaster: cbic@icegate.gov.in

Madam/Sir,

Subject: Standard Operating Procedure (SOP) for NCLT cases in respectof the Insolvency and bankruptcy Code (IBC) – reg.

I am directed to inform the Insolvency and Bankruptcy Board of India has requested that role of GST and Customs authorities in certain key issues under the Insolvency and bankruptcy Code, 2016 needs to be formulated. Further, GST and Customs Authorities have been classified as operational creditors and are required to submit their claims against corporate debtors when the Corporate insolvency and resolution process is initiated and public announcement inviting claims is made by the insolvency professional.

2. A timeline of 90 days from the insolvency commencement date is available for filing of claims. However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan is approved. It is also observed that the authorities then litigate on the rejection of each claims, despite the settled position that no claims can be raised once the plan is approved and no demands can be raised on the Resolution Applicant who has taken over the company through such a resolution plan."

6. *Appellant-assessee has also claimed that the refund of pre-deposit to be paid to them at the time of filing the captioned appeal. In this regard, we find that the matter has already been decided by the Hon'ble Supreme Court in the case of Ruchi Soya [2022 (380) ELT 8 (SC)]. The relevant paras of thejudgement is extracted as follows:*

"14. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent No. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the Learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.

15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim

> *of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."*
>
> ***7.*** *However from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functusofficio in the matters relating to this appeal.*
>
> ***8.1*** *In view of the order passed by the Co-ordinate Bench of this Tribunal vide Final Order No. A/86026-86036/2022 dated 19.07.2022 and on the basis of the judgement of the Hon'ble Supreme Court in Ghanashyam Mishra (supra) and upon taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the corporate debtor of the appellant-assessee company, we are of the view that the appeals before this Tribunal are abated."*

7. By following the ratio of the above said decision, we are of the considered view that once the Resolution Plan has been approved by the NCLT, thereafter, the present appeal stands abated as the CESTAT has become *functus officio* in the matter relating to the present appeal.

8. In view of our discussion above, the appeal filed by the appellant is disposed of as abated.

(Operative part of the order pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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