

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI
REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41263 of 2017

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-059-17, dated 02.03.2017 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals -I), 6/7, A.T.D. Street, Race Course Road, Coimbatore)

Aircel Limited

No.7/A, Huzur Road
CODISSIA G D Naidu Towers
Coimbatore, Tamil Nadu 641 018

...Appellant

Versus

Commissioner of GST and Central Excise

Coimbatore Commissionerate
No,6/7, A.T.D.Street
Race Course Road, Coimbatore 641 018

...Respondent

APPEARANCE:

For the Appellant : Mr. G. Sheerabdhinath, Advocate

For the Respondent : Mr. N. Satyanarayana, Authorised Representative

CORAM:

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.40212/2026

DATE OF HEARING: 30.01.2026

DATE OF DECISION: 16.02.2026

Per AJAYAN T.V.

Shri G. Sheerabdhinath, Ld. Counsel appearing for the appellant submitted that in the Appellant's Company Petition, (CP) (IB) No.298/2018, the common Resolution Professional had preferred an Interlocutory Application No.1864/2019 before the NCLT, Mumbai Bench – II, seeking approval for the Resolution Plan and the same has been approved by the Adjudicating Authority vide order dated 09.06.2020. Ld. Counsel requested that in the said circumstances, the appeals preferred by the Appellant may be treated as disposed. Ld. Counsel produced the said order dated 09.06.2020 of the NCLT as

well as copies of Final Order Nos.40633 – 40642/2025 dated 20.06.2025 passed by this Tribunal earlier, in similar circumstances.

2. Ld. Authorised Representative, Mr. N. Satyanarayana agreed with the submission that NCLT has approved the Resolution Plan and expressed no objections to the request made.

3. We have heard both sides and perused the order of NCLT dated 09.06.2020. The order reflects that three Interlocutory Applications (IAs)-IA No. 1864/2019 in CP (IB) No.298/2018 (in the matter of Aircel Limited), IA No.1863/2019 in CP (IB) No.302/2018 (in the matter of Dishnet Wireless Limited) and IA No. 1865/2019 in CP (IB) No.300/2018 (in the matter of Aircel Cellular Limited) have been filed by Mr Vijaykumar V. Iyer, common Resolution Professional of Aircel Limited, Dishnet Wireless Limited and Aircel Cellular Limited (collectively referred to as 'Corporate Applicants'), under section 30(6) read with section 31(1) of the Insolvency & Bankruptcy Code (IBC), seeking approval of the Adjudicating Authority for the Resolution Plans submitted by UV Asset Reconstruction Company Limited for resolution of the corporate applicants.

4. NCLT has vide the said order held in para 6.7.3 as under:

“ The Resolution Plans placed on record in respect of all the three corporate applicants, viz., (1) Aircel Limited; (2) Dishnet Wireless Limited; and (3) Aircel Cellular Limited, is hereby approved with the modifications mentioned in para 6.7.1 *supra*. The same shall be binding on the respective corporate applicant, its members, creditors, guarantors, employees and other stakeholders, as also the Resolution Applicants.”

5. At this juncture, it is apposite to note the decision of the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd, reported in [2021] 13 S.C.R 737***. The Apex Court has framed the questions that has arisen for consideration by the Court as under:

“2. The short but important questions, that arise for consideration in this batch of matters, are as under:-

- (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 (hereinafter 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 the adjudicating authority?"

6. Thereafter, the Hon'ble Apex Court has gone on to analyse the various precedents. After extensive deliberations on the relevant provisions of IBC, the Apex Court has gone on to hold as under:

" 91. It is a cardinal principle of law, that a statute has to be read as a whole. Harmonious construction of sub-section (10) of Section 3 of the I&B Code read with sub-sections (20) and (21) of Section 5 thereof would reveal, that even a claim in respect 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 would come within the ambit of 'operational debt'. The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of 'operational creditor' as defined under sub-section (20) of Section 5 of the I&B Code. Consequently, a person to whom a debt is owed would be covered by the definition of 'creditor' as defined under sub-section (10) of Section 3 of the I&B Code. As such, even without the 2019 amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term 'creditor' and in any case, by the term 'other stakeholders' as provided in sub-section (1) of Section 31 of the I&B Code.

92. The Division Bench of the Rajasthan High Court in D.B. Civil Writ Petition No.9480 of 2019 in the case of **Ultra Tech Nathdwara**

Cement Ltd. vs. Union of India & Ors., by judgment and order dated 7.4.2020 has taken a view, that the demand notices, issued by the Central Goods and Service Tax Department, for a period prior to the date on which NCLT has granted its approval to the resolution plan, are not permissible in law. While doing so, the Rajasthan High Court has relied on the judgment of this Court in the case of **Committee of Creditors of Essar Steel India Limited through Authorised Signatory** (supra).

93. The Calcutta High Court in the case of **Akshay Jhunjunwala & Anr. vs. Union of India through the Ministry of Corporate Affairs & Ors.**³⁵ has also taken a view, that the claim of operational creditor will also include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute. We are in agreement with the views taken by these Courts.

94. Therefore, in our considered view, the aforesaid provisions leave no manner of doubt to hold, that the 2019 amendment is declaratory and clarificatory in nature. We also hold, that even if 2019 amendment was not effected, still in light of the view taken by us, the Central Government, any State Government or any local authority would be bound by the resolution plan, once it is approved by the Adjudicating Authority (i.e. NCLT).

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, all such claims, which are not 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

effective from 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 to the date on which the Adjudicating Authority grants their approval under Section 31 could be continued."

7. It is clear from the aforesaid Judgement that once the Resolution Plan is approved by the Adjudicating Authority under Section 31 (1) of Insolvency and Bankruptcy Code 2016 (IBC), then "no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan". We make it clear that neither side has informed us as to whether or not the statutory dues owed to the Central Government, under contest in this appeal before us, are part of the said resolution plan or not. Be that as it may, as the conclusions of the Apex Court has also elucidated that 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 their approval under Section 31 could be continued, to our mind, it is clear that, in any event, the present proceedings in this appeal cannot be continued before us. Ordered accordingly.

The appeal stand disposed of in these terms.

(Order dictated and pronounced on 16.02.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Separate Order
(M. AJIT KUMAR)
Member (Technical)

Per M. Ajit Kumar,

8. I have had the benefit of going through the order prepared by my Learned Brother Shri Ajayan T.V. (Member, Judicial), above. I whole heartedly agree with the conclusion arrived therein, that in the light of the Resolution Plan approved by the Adjudicating Authority under Section 31(1) of the IBC in this case, the present proceedings in this appeal cannot be continued before us. I would however like to state my views on the legal issues involved.

9. When insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (**IBC**) are initiated and admitted by the National Company Law Tribunal (**NCLT**), it has a direct procedural impact on any pending tax appeals involving the corporate debtor. As soon as an application is made under Section 7, 9 or 10 of the IBC and admitted, it marks the commencement of insolvency. Once the NCLT admits the insolvency application and appoints an Interim Resolution Professional (**IRP**), the appellate authority dealing with a tax dispute against a tax demand, is required to adopt a ***hands-off approach*** and must not proceed to decide the appeal on merits while the corporate insolvency resolution process (**CIRP**) is ongoing. A reading of the provisions under section 13 and 14 of the IBC along with the decision in **Ghanashyam Mishra And Sons** (supra), clearly shows that once the proceedings have commenced under the IBC, a moratorium in terms of Section 14 of the Code is to be declared by the adjudicating authority. With this the continuance of the pending suits or proceedings against the corporate debtor in any court of law, tribunal, arbitration panel or other authority, is prohibited until the matter reaches a logical conclusion with due approval of the resolution plan. The exceptions to

the said provision and not relevant to this discussion and need not detain us here. Immediately after the adjudicating authority approves the resolution plan, the moratorium order passed by the authority shall cease to have effect. The objective is to ensure that all claims against the corporate debtor, including statutory tax dues, are dealt with comprehensively within the IBC framework. It is settled law that a consolidating and amending act like the IBC forms a code complete in itself and is exhaustive of the matters dealt with therein. [See: Supreme Court judgment in **M/S. INNOVENTIVE INDUSTRIES LTD. Vs ICICI BANK & ANR.** - CIVIL APPEAL No's. 8337-8338 OF 2017, Dated: 31.08.2017]

10. During CIRP, the Committee of Creditors (**CoC**) may approve a resolution plan aimed at reviving the corporate debtor as a going concern, instead of opting to liquidate the company or handing it over to another entity. It is left to the **commercial wisdom** of the majority of creditors of the Committee, to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place. [See: **K. Sashidhar Vs Indian Overseas Bank & Ors** - CIVIL APPEAL NO.10673 OF 2018, Dated: 05.02.2019]. Such a plan may restructure debts or otherwise settle liabilities, including statutory dues or permit the continuation of appeal if beneficial to the resolution scheme. For example if a refund of Rupees one crore filed by an assessee (now corporate debtor) before the Service Tax department was rejected, and the assessee had filed an appeal to the Tribunal before proceedings under IBC were initiated, it may be advantageous to the company or for its new owners to proceed with the appeal. Immediately after the resolution plan is

approved by the NCLT under Section 31(1) of the IBC, it becomes binding on all stakeholders. The fate of the pending tax appeal depends on the contents of the approved resolution plan. If the approved plan ***expressly permits*** continuation of the tax appeal, the appellate proceedings may continue. Otherwise, the Appellate Tribunal loses jurisdiction to proceed further and becomes ***functus officio***. (one whose duty has ceased)

11. As per Section 35C of the Central Excise Act, 1944 which is also applicable to Service Tax matters, "The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling ***the decision or order appealed against*** or may refer the case back to the authority which passed such decision or order. ." [Also see: Section 129B of the Customs Act]. This Appellate Tribunal must thus confine its discussion to the grounds stated and the prayer made in the Appeal Memorandum against the impugned order. The Central Excise Act, 1944/ The Customs Act, 1962 and the IBC operate in distinct statutory spheres, and the Tribunal must respect the primacy of the IBC process once insolvency proceedings are admitted and concluded. A three Judge Bench of the Hon'ble Supreme Court in **SUNDARESH BHATT, LIQUIDATOR OF ABG SHIPYARD Vs CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS** [CIVIL APPEAL No. 7667 of 2021, Dated: 26.08.2022], held as under:

"38 **We may note that the IBC, being the more recent statute, clearly overrides the Customs Act.** This is clearly made out by a reading of Section 142A of the Customs Act. The aforesaid provision notes that the Custom Authorities would have first charge on the assets of an assessee under the Customs Act, except with respect to cases under Section 529A of Companies Act 1956, Recovery of Debts Due to Banks and Financial

Institutions Act 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the IBC, 2016. Accordingly, such an exception created under the Customs Act is duly acknowledged under Section 238 of the IBC as well. Additionally, we may note that Section 238 of the IBC clearly overrides any provision of law which is inconsistent with the IBC. Section 238 of IBC provides as under:

238. Provisions of this Code to override other laws – 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.”
(emphasis added)

The above judgment would equally apply to orders passed under the Central Excise Act 1944 and the Finance Act 1994. Any attempt by this Tribunal to examine the grounds of the appeal/ prayer, in the light of the IBC, including the entitlement to initiate or continue appeal proceedings in respect of claims not forming part of the resolution plan, or the survival or extinguishment of statutory dues once the resolution plan is approved, or to interpret the NCLT decision in terms of the aforesaid issues, would transgress the legislative mandate and must therefore be eschewed. Moreso for after becoming *functus officio*.

12. In fine, the IBC temporarily halts the processing of the tax appeals filed before this Tribunal involving a corporate debtor once the insolvency resolution process has commenced, and permanently concludes them when the resolution plan is approved by the NCLT. With this the Tribunal loses its jurisdiction to proceed further - unless the approved resolution plan specifically allows the continuation of the appeal.

13. We find that the appellant has drawn our attention to a Coordinate Bench decision of this Tribunal in **Final Order Nos 40633-**

40642/2025 dated 20.06.2025 in the case of **Aircel Limited, Coimbatore**, where in a similar issue the Bench after finding that the Resolution Plan had been approved by the Adjudicating Authority under section 31(1) of the IBC had held that the appeals stand closed/disposed of accordingly.

14. Considering the facts of this case, since the resolution plan does not specifically provide for continuation of the appeal pending before us, it stands concluded by the operation of law as stated in the IBC, and is disposed of accordingly.

(Pronounced in open court on 16.02.2026)

Sd/-
(M. Ajit Kumar)
Member (Technical)

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