

(2025) 12 DEL CK 1796

In the Delhi High Court

Case No : Writ Petition (C) No.2281 Of 2025, Civil Miscellaneous Application
Nos. 10744, 56666 Of 2025

M/s Era Infra Engineering Limited

APPELLANT

Vs

Joint Commissioner Cgst Delhi South Commissionerate & Ors.

RESPONDENT

Date of Decision : 15-12-2025

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 14, 16, 30(2), 31, 31(1), 33(5), 53

Citation : (2025) 12 DEL CK 1796

Hon'ble Judges : Prathiba M. Singh, J; Shail Jain, J

Bench : Division Bench

Advocate : Kavita Jha, Kanika Sethi, R. Ramchandran, Prateek Dhir, Vaishali Gupta

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. These are three writ petitions seeking quashing of respective demand cum Show Cause Notices and the consequential impugned orders. The details of the same are tabulated as under:

W.P.(C)

PERIOD

SCN

IMPUGNED ORDER

TOTAL DEMAND

W.P.(C)

2281/2025

FY 2018-19

02.08.2024

14.11.2024 25.11.2024

Rs. 9,99,73,080/-

Rs. 2,22,78,388/-

W.P.(C)

2305/2025

FY 2019-20

02.08.2024

14.11.2024 25.11.2024

Rs. 9,99,73,080/-

Rs. 9,72,06,860/-

W.P.(C)

2307/2025

FY 2017-18

02.08.2024

14.11.2024 25.11.2024

Rs. 9,99,73,080/-

Rs. 8,04,60,912/-

3. The background giving rise to these petitions is that the Petitioner was involved in the construction industry and owing to certain financial difficulties which it faced, it underwent insolvency proceedings before the National Company Law Tribunal, New Delhi (hereinafter, 'NCLT').

4. The Union Bank of India, as a financial creditor, had filed an application being CP(IB) No. 190(PB)/2017 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, 'IBC') in June, 2017.

5. As per Section 16 of the IBC, initially, an Interim Resolution Professional (hereinafter, 'IRP') was appointed. Claims were thereafter called and the Committee of Creditors, on 12th June, 2018 confirmed the IRP to be the Resolution Professional (hereinafter 'RP'). Subsequently, an application bearing CA/1346/PB/2018, for confirmation of the appointment of RP was allowed by NCLT, Delhi, vide order dated 18th December, 2018.

6. In the meantime, the GST registration of the Petitioner got cancelled on 22nd July, 2020 and during the course of insolvency proceedings the GST department also filed its claims to the tune of Rs. 4,02,30,448/- before the RP.

7. On the basis of the Expressions of interest (hereinafter, 'EOI') that were received by the RP, the claim of the GST department was crystallised to an amount of Rs.1,94,26,381/-.

8. Eventually, the resolution plan of one M/s S. A. Infrastructure Consultants Private Limited was approved by the NCLT, Delhi, on 11th June, 2024. The new management has since taken over the Petitioner company.

9. In the meantime, the impugned orders were issued to the Petitioner on 14th November, 2024 and 25th November, 2024, seeking to recover the sums tabulated above, along with interest.

10. In respect of these demands which are impugned before the Court, an interim order was passed on 21st February, 2025 in the following terms.

"5. Prima facie, we find merit in the challenge which stands raised bearing in mind the undisputed fact of the Resolution Plan having been approved under the Insolvency & Bankruptcy Code, 2016["IBC"] coupled with the fact that the Goods and Services Tax Department had been duly placed on notice in the course of the Corporate Insolvency Resolution Process ["CIRP"].

6. It is in the aforesaid backdrop that Ms. Jha, learned senior counsel places reliance upon the judgments in Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta[(2020) 8 SCC 531] and Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Limited [(2021) 9 SCC657]. Matter requires consideration.

7. Accordingly and till the next date of listing, there shall be stay of the impugned orders dated 14 November 2024 and 25 November 2024."

11. The submission of Ms. Kavita Jha, Id. Senior Counsel is that the impugned demands would be untenable, as they relate to the period prior to the final approval of the resolution plan by the NCLT, Delhi on 11th June, 2024 and the claims of the GST Department were already considered and made part of the resolution process. Hence, no fresh demands could have been raised in respect of the previous periods after the approval of the resolution plan.

12. Mr. R. Ramachandran, Id. SSC, on the other hand merely states that the orders are only meant to crystallize the amounts and no steps for recovery have been taken by the Department.

13. The Court has heard the Id. Counsels for the parties.

14. The order dated 11th June, 2024, passed by NCLT- Delhi, by which the resolution plan was approved, reads as under.

"25. In view of the above discussion, this Adjudicating Authority is satisfied that

the Resolution Plan as filed and explained by the SRA meets the requirement of Section 30(2) of IBC.

26. It is pertinent to clarify that the Applicant (Resolution Professional) has filed certain Additional Affidavits such as affidavit dated 12.04.2024, respectively along with the Resolution Plan. Furthermore, the SRA has also provided certain clarifications to the Applicant vide Affidavit dated 28.11.2022, Email dated 06.10.2022 and a Letter dated 01.02.2023. It is clarified that all the documents mentioned hereinabove, shall form part and parcel of the Resolution Plan and shall be read along with the Resolution Plan. It is directed that the SRA shall perform all of its obligations and commitments made in clarifications/affidavits.

27. Therefore, in our considered view, there is no impediment to giving approval to the instant Resolution Plan. Accordingly, we hereby approve the Resolution Plan, which shall be binding on the corporate debtor and its employees, shareholders of the corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, Successful Resolution Applicant and other stakeholders involved.

28. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.

[XXX]

31. The approved Resolution Plan shall become effective from the date of passing of this order. The Approved Resolution Plan shall be a part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein."

15. In terms of the above order dated 11th June, 2024, passed by NCLT, the new management has since taken over the Petitioner company. Thus, the stand in the writ petitions is that subsequent to this order of the NCLT, Delhi dated 11th June, 2024 coming into effect, no demands can be raised by the GST Department for the time period prior to the passing of such order.

16. In "Ghanashyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Limited in CA: 8129 of 2019" the Supreme Court, while considering the scheme of the IBC, has held 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.

(....)

102.3 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.”

17. Further, in *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs* (2023)1 SCC 472, as relied upon by Mr. R. Ramachandran, Id. SSC, the Supreme Court has held as under:

“48. From the above discussion, we hold that the respondent could only initiate assessment or reassessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC. The interim resolution professional, resolution professional or the liquidator, as the case may be, has an obligation to ensure that assessment is legal and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive.

50. As laid down earlier, the Customs Act and IBC can be read in a harmonious manner wherein the authorities under the Customs Act have a limited jurisdiction to determine the quantum of operational debt - in this case, the customs duty — in order to stake claim in terms of Section 53 of the IBC before the liquidator. However; the respondent does not have the power to execute its claim beyond the ambit of Section 53 of the IBC. Such harmonious construction would be in line with the ruling in *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*, wherein a balance was struck by this Court between the jurisdiction of NCLT under the IBC and the potential encroachment on the legitimate jurisdiction of other authorities.”

18. In the opinion of this Court, from the above two decisions it becomes clear that no demand can be raised after the resolution plan has been approved ,in respect of a period prior thereto.

19. The GST Department, having already participated in the insolvency proceedings and having filed its claims, cannot raise further demands in this manner, as there has to be a final conclusion to the insolvency proceedings. Moreover, the new management cannot be saddled with any of the additional demands in respect of the previous period.

20. Accordingly, the Impugned Orders-In-Original dated 14th November, 2024 and 25th November, 2024 and the consequential demands raised therein are not tenable. The same are, thus, set aside.

21. Needless to add, the merits of the orders or the demands have not been gone into by this Court.

22. The present petitions are disposed of in said terms. Pending applications, if

any, are also disposed of.