

Tiger Surgical Disposable Pvt. Ltd. Versus Vs Principal Commissioner of Customs, Ahmedabad

Court: Gujarat High Court

Date of Decision: Jan. 9, 2025

Acts Referred: Constitution of India, 1950 " Articles 226, 227
Insolvency and Bankruptcy Code, 2016 " Section 3(6), 3(11), 7, 14, 30, 30(6), 31, 239

Hon'ble Judges: Bhargav D. Karia, J; D.N.Ray, J

Bench: Division Bench

Advocate: Jaimin R Dave, Hetvi H Sancheti

Final Decision: Allowed

Judgement

D.N.Ray, j

1. Heard learned advocate Mr.Jaimin R. Dave for the petitioner and learned advocate Ms.Hetvi H. Sancheti for the respondent.

2. Rule returnable forthwith. Learned advocate Ms. Hetvi H. Sancheti waives service of notice of rule on behalf of the respondent. With the consent

of learned advocates for the respective parties, the matter is taken up for final hearing, as the issue involved is very short.

3. This petition is filed under Articles 226 and 227 of the Constitution of India with a prayer to quash and set aside the impugned order dated

19.01.2023 passed by the respondent. Accordingly, the following prayers have been made :-

Ã¢â‚¬Å“a) YOUR LORDSHIPS may be pleased to quash and set aside the order dated 19.01.2023 at Annexure ""A"" to the Petition being in

contravention of Section 31 of Insolvency and Bankruptcy Code, 2016 and dicta laid down by Hon'ble Supreme Court in Ghanshyam

Mishra and Sons Put. Ltd. us. Edelweiss Asset Reconstruction Company Limited, reported in (2021) 9 SCC 657;

(b) During pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay the execution, implementation

and operation of the order dated 19.01.2023 at Annexure ""A"" to the Petition and restrain Respondents from initiating any proceedings

pursuant to the order dated 19.01.2023 at Annexure ""A"" to the Petition;

c) Pass any such other and/or further order that may be thought just and proper, in the facts and circumstances of the present case;

d) Award cost of the present petition.Ã¢â‚¬â€¢

4.1. A Company Petition (I.B.) No. 199 of 2018 was filed by Financial Creditor namely, M/s. J. M. Financial Asset Reconstruction Company Ltd

under Section 7 of Insolvency and Bankruptcy Code, 2016 (herein after referred to as ""IB Code"") for initiation of Corporate Insolvency Resolution

Process before the Ld. National Company Law Tribunal, Ahmedabad Bench (hereinafter referred to as ""NCLT"").

4.2 Accordingly, the IRP, Mr. Hiten M Parikh invited claims against the Petitioner through a public advertisement dated 02.08.2019. It is submitted

that subsequent to such public announcement, all the persons/ departments/ companies/ corporations who had outstanding claims against the petitioner

were under obligation to lodge their claims before the IRP under the prescribed form.

4.3 On 28.11.2019, the resolution plan submitted by Resolution Applicant was approved by CoC on 28.11.2019 by 100% voting share. Thereafter, RP

filed an application being Interlocutory Application No. 54 of 2020 in Company Petition (I.B.) No. 199 of 2018 under Section 30(6) of the I.B. Code

for obtaining the approval of resolution plan of Ld. NCLT in accordance with Section 30 read with Section 31 of the I.B. Code.

4.4. In the meantime, despite the fact that moratorium under Section 14 of IB Code was in existence, a show cause notice dated 24.07.2019 bearing

number F. No. DRI/AZU/CI/ENQ-22(INT-05)/2019-Tiger was issued by Pr. Additional Director General, Directorate of Revenue Intelligence,

Ahmedabad Zonal Unit, Ahmedabad and proceedings were initiated against the Petitioner for alleged violation of Customs Act, 1962, Export and

Import Policy 2004-2009 and EPCG Authorization Scheme.

4.5 As per the terms of the approved resolution plan, the Successful Resolution Applicant had agreed for payment of Rs. 3,33,74,000/- (Rupees Three

CroresThirty-Three Lakhs Seventy-Four Thousand) to the creditors of the Petitioner who had lodged their claim before IRP/RP.

4.6. That under the said resolution plan, Petitioner was required to pay an amount of Rs. 10,05,249/- to the office of the Commissioner of Customs

(Export). Accordingly, on 15.07.2021, the petitioner issued three Demand Drafts of Rs. 10,05,249/- to the Commissioner of Customs (Export).

However, since the said Demand Drafts were not deposited by Commissioner of Customs (Export), the same got expired. In view of the above, vide

letter dated 28.03.2022, Commissioner of Customs (Export), Mumbai requested Petitioner to issue fresh Demand Drafts vide letter dated 28.03.2022.

In view of the above, the petitioner has issued fresh Demand Drafts dated 06.04.2022. These Demand Drafts are encashed by Commissioner of

Customs (Export), Mumbai.

4.7. Thereafter, the Respondent has passed impugned order dated 19.01.2023 under Customs Act, 1962 confirming the demand of customs duty and

imposing penalty on the Petitioner on account disallowing the exemption of customs duty at the time of import of capital goods under EPCG Scheme

and Advance Licence.

5. Learned advocate Mr.J.R.Dave appearing for the the petitioner submitted that such an order dated 19.01.2023 is an complete violation of Section

31 of Insolvency and Bankruptcy Code, 2016 and judgment of Hon'ble Supreme Court in case of Committee of Creditors of Essar Steel India Ltd. Vs.

Satish Kumar Gupta reported in [2019] 111 taxmann.com 234 (SC) and in case of Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset

Reconstruction Company Ltd., reported in (2021) 9 SCC 657. Furthermore, by virtue of Section 239 of Insolvency and Bankruptcy Code, 2016, the

provisions of Insolvency and Bankruptcy Code, 2016 will prevail over all other laws including Customs Act, 1962.

6. Ms. Hetvi Sancheti appearing on behalf of the respondent has submitted that the Order-in-Original issued by the Adjudicating Authority is well

reasoned. The Adjudicating Authority has confirmed the customs duty and imposed penalty after having considered the NCLT Order dated

16.09.2020 for approval of resolution. After taking this Court to the definition of the term "claim" under Section 3 (6) and "debt" as defined

under Section 3(11) and "approval of resolution plan" under Section 31 of the Insolvency and Bankruptcy Code , 2016 (for short "IBC") Ms.

Sancheti, learned advocate submitted that in the present case, show cause notice was issued proposing customs duty, interest and penalty which had

not attained finality by way of issuing order by the Commissioner of Customs and therefore, on the date of issuance of the order for "approval of

resolution plan" under section 31 of the IBC, there was no existing debt or claim against the petitioner and therefore, the order for "approval of

resolution plan" under Section 31 (1) of the IBC is not applicable to the present case and therefore, the decision of the Apex Court in the case of

Edelweiss (Supra) will not be applicable in the facts of the case.

7. DISCUSSIONS & FINDINGS :-

The resolution plan, which has been approved under Section 31(1) of the IBC, in the instant case, as annexed to the present petition at Annexure

"E" contains, inter-alia, the following clauses of importance which are referred to hereinbelow for convenience.

"8.2 PLAN TO PREVAIL:

The provisions of this Plan shall prevail over the provisions of all agreements/arrangements/purchase orders I work orders, etc. entered

into by the Company, including any joint venture agreements, share subscription agreements and shareholders' agreements

8.3 INQUIRES INVESTIGATIONS ETC:

All inquiries, investigations, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other

judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Company or affairs of the Company,

pending or threatened, present or future (including without limitation, any investigation, action proceeding, prosecution, whether civil or

criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other enforcement agency), in relation to any period

prior to the effective Date shall be deemed to be withdrawn or dismissed by virtue of the order of the Hon'ble Adjudicating Authority / NCLT

approving this Resolution Plan and the Company or the Resolution Applicants shall at no point of time be, directly or indirectly, held

responsible or liable in relation thereto.

8.4 LIMIT ON LIABILITY:

Notwithstanding anything contained in this Resolution Plan, in no event the total payments by the Company to its creditors, for claims

relating to a period prior to the CIRP Commencement Date (including claims recognized in this Resolution Plan and claims that may arise in

future), shall exceed the Liquidation Value.

It is also clarified that following the approval of the Resolution Plan, all liabilities (except for the liabilities in the Information Memorandum

and as provided for in this Resolution Plan, of the Company) whether recorded in its books or otherwise, will be extinguished. No further

claims, either against the Company or against the Resolution Applicant will be permitted to be brought once the Plan has been approved

and implementation has commenced.

All claims that may arise in the future, including any claims from dues arising under any law for the time being in force and payable

to the Central Government, any State Government or any local authority, resulting from a judicial proceeding or otherwise shall be subject

to the limit specified in this in so far as they relate to the period prior to the Effective Date.

8. The Apex Court, in case of Edelweiss (Supra) has categorically 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.

102.2 The 2019 Amendment to Section 31 IBC is clarificatory and declaratory in nature and therefore will be effective from the date on

which IBC has come into effect.

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.

138 In the forgoing paragraph, we have held that the 2019 Amendment to Section 31 IBC is clarificatory and declaratory in nature and

therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the

resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject-matter of the petition

are the proceedings which relate to the claims of the respondents prior to the approval of the plan, the same cannot be continued. Equally

the claims, which are not part of the resolution plan, shall stand extinguished.

9. A reading of the aforesaid paragraphs of the Hon'ble Apex Court judgment in the case of Edelweiss (Supra) leaves no manner of doubt

whatsoever that no claim except which is categorically approved in the resolution plan shall survive after the order under Section 31 (1) of the IBC is

passed. As noted hereinabove, the resolution plan in paragraph No. 8.4 contains the following clause :-

"No further claims, either against the company or against the resolution applicant will be permitted to be brought once the plan has been

approved and implementation has commenced"

10. We are of the opinion that the decision of the Hon'ble Apex Court in the case of Edelweiss (Supra) applies fully and squarely to the facts of

the present case. Therefore, no new customs duty, interest or penalty which has been proposed by the respondent can be levied, once the resolution

plan stands approved. Further in view of the categorical binding ratio as laid down in paragraph Nos. 102.1, 102.2, 102.3, and 138 of Edelweiss

(Supra), Ms. Sancheti's submissions deserve to be rejected.

11. In view of the above, the impugned order dated 19.01.2023 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No

order as to costs.