GAHC010125832021

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4129/2021

M/S ASSAM COMPANY INDIA LTD.
HAVING ITS REGISTERED OFFICE AT GREENWOOD TEA ESTATE, DIBRUGARH, ASSAM-786001 DULY REPRESENTED BY SH. DIBAKAR RAY, AGED ABOUT 38 YEARS AUTHORISED REPRESENTATIVE

VERSUS

JAGDISH BAGH
S/O LT. DHANIRAM BAGH, R/O MAIJAN TEA ESTATE RAJGARH, P.S.- DIBRUGARH, DIST- DIBRUGARH, ASSAM

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the petitioner(s) : Mr. A Sarma

Advocate for the respondent(s) : Ms. M Barman
Legal Aid Counsel

Date on which Judgment is reserved: NA

Date of Pronouncement of Judgment : **30.07.2026**

Whether the Pronouncement is of the : Yes
Operative Part of the Judgment

Whether the Full Judgment has been : No
Pronounced

JUDGMENT & ORDER(ORAL)

Heard Mr. A Sarma, the learned counsel appearing on behalf of the Petitioner. I have also heard Ms. M Barman, the learned Legal Aid Counsel, who appears on behalf of the Respondent/Workman.

PREFACE:

2. The present writ petition has been filed assailing the order dated 19.04.2021 passed by the learned Labour Court Dibrugarh in Misc. Case No.01/2018 arising out of Reference Case No.04/2016.

BRIEF FACTS OF THE CASE:

3. The Petitioner herein is a Company registered under the provisions of the Companies Act 1956. The Petitioner Company namely M/s. Assam Company India Ltd. owns various tea estates including a Tea Estate in the name and style of Maijan Tea Estate. An industrial dispute arose when the Management of the Maijan Tea Estate dismissed the Respondent w.e.f. 15.12.2014. The Appropriate Government vide the Notification No.GLR.135/2015/30 dated

06.02.2016 issued a Notification under Section 10 referring the industrial dispute to the learned Labour Court of Assam at Dibrugarh. The said Reference so made was registered and numbered as Reference Case No.4/2016.

4. When the said Reference proceedings were taken up for hearing in the National Lok Adalat on 12.11.2016, the Management of the Maijan Tea Estate as well as the Respondent herein agreed to an amicable settlement. In terms with the amicable settlement though the Respondent would not be reinstated to his service, the Management of Maijan Tea Estate agreed to pay full back wages w.e.f. date of the dismissal from service till 12.11.2016. The Management of Maijan Tea Estate also agreed to provide the Respondent full service benefits including the retirement benefits etc., and additionally an amount of Rs.5000/- as compensation to the Respondent. This payment was required to be made within 30(thirty) days from 12.11.2016. In addition to that, the Management of Maijan Tea Estate also agreed to appoint the Respondent as Bodli worker after assessing the suitability and fitness of the Bodli worker. On the basis of the amicable settlement an Award was passed on 12.11.2016 itself. The learned counsel for the Petitioner submitted that in pursuance to the Award, the Respondent's son-in-law was appointed as a Bodli worker.

5. The payment of the back wages along with other service benefits which was required to be paid by the Management of Maijan Tea Estate admittedly was not paid.

6. The Petitioner i.e. M/s. Assam Company India Ltd. pursuant thereto was involved in a proceeding under the ***Insolvency and Bankruptcy Code, 2016*** (for short, 'the Code') before the National Company Law Tribunal, Guwahati Bench (for short, the NCLT), on the basis of a proceedings initiated by a company namely M/s. SREI Infrastructure (P) Ltd.

7. The record reveals that a company in the name and style of M/s. BRS Ventures Investment Limited submitted a Resolution Plan to the Committee of Creditors. The Final Resolution Plan so submitted by M/s. BRS Ventures Investment Limited was accepted by the Committee of Creditors. Thereupon, the said Final Resolution Plan was approved by the NCLT vide an order dated 20.09.2018, thereby opining *inter alia* that the Final Resolution Plan was in conformity with Section 30(2) of the ***Insolvency and Bankruptcy Code, 2016*** (for short, 'the Code of 2016').

8. In the meantime, the Respondent having not been made the

payment of his dues in terms with the Award dated 12.11.2016, filed an application before the learned Labour Court for quantifying the dues payable to the Respondent along with the other ancillary dues and enforcement thereof. The said application was registered and numbered as Misc. Case No.01/2018.

9. The Petitioner company, whose constitution in the meantime changed in view of the approval of the Resolution Plan filed written objection raising the plea that in view of the acceptance of the Resolution Plan by the learned NCLT, no liability can be saddled upon the Petitioner Company on the basis of the Award dated 12.11.2016.

10. The learned Labour Court vide the impugned order dated 19.04.2021 quantified the dues payable to the Respondent which was to the tune of Rs.1,85,175/- along with other fringe benefits. By the impugned order, it was further directed that the payment be made within 2(two) months from the date of passing of the impugned order, failing which proceedings under Section 29 of ***the Industrial Dispute Act, 1947*** would be initiated. It is under such circumstances, the Petitioner company had approached this Court by filing the present writ petition.

11. The records reveal that this Court vide an order dated 26.08.2021

issued notice and stayed the impugned order dated 19.04.2021.

12. The Respondent appeared and filed an affidavit-in-opposition. In the said affidavit-in-opposition, the Respondent took the stand that the finality attached to the Resolution Plan upon being approved by the learned NCLT is subject to publication made in accordance with Regulation 6 of the ***Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*** (for short 'the Regulations of 2016'). It is the specific contention of the Respondent that he was not aware of the insolvency proceedings as well as the Public Notification issued. It is also the contention that the Public Notification was not issued in terms with Regulation 6 of the Regulations of 2016. Furthermore, the Respondent also stated the Information Memorandum so submitted ought to have included the Respondent's claim and not mentioning the Respondent's claims was the fault of the Resolution Professional.

13. An Affidavit-in-reply was filed by the Petitioner reiterating the statements made in the writ petition and denying to the allegation made in the Affidavit-in-Reply. Further, an order dated 23.07.2018 was enclosed of the learned NCLT to show that proper publication was duly made in four dailies i.e., Business Standard, Ek Din, Amar Asom and B.S India.

SUBMISSIONS MADE ON BEHALF OF THE PARTIES:

14. Mr. A Sarma, the learned counsel appearing on behalf of the Petitioner submitted that when a Resolution Plan had been approved by the learned NCLT under Section 31 of the Code of 2016, all claims as provided in the Resolution Plan shall stand frozen and would be binding upon the Corporate Debtor and its Employees, Members, Creditors, including the Central Government or the State Government or any local Authority, Guarantors, and other Stakeholders. The learned counsel submitted that upon the approval of the Resolution Plan on 20.09.2018 by the learned NCLT, all such claims which were not part of the Resolution Plan shall stand extinguished, and no person will be entitled to initiate or continue any proceedings in respect to the claim which is not a part of the Resolution Plan. The learned counsel, therefore, submitted that as the Respondent herein did not submit his claims in terms with Regulation 9 of the ***Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016***, the Respondent now cannot claim any amount on the basis of the Award dated 12.11.2016. The learned counsel, therefore, submitted that the impugned order dated 19.04.2021 was passed completely disregarding the settled principles of law as held by the Supreme Court in the case of the ***Committee Of Creditors Of Essar Steel***

India Ltd. Vs. Satish Kumar Gupta And Others, reported in ***(2020) 8 SCC 531. Ghanashyam Mishra And Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited,*** reported in ***(2021) 9 SCC 657***.

15. *Per contra*, Ms. M Barman, the learned Legal Aid Counsel submitted that Section 31 of the Code only refers to the extinguishment of such claims, which are the part of the Resolution Plan, and not in respect to those claims which were never taken into consideration by the Resolution Professional when the Corporate Debtor was not granted an adequate opportunity to submit the claims in terms with Regulation 9 of the Regulations of 2016. The learned Legal Aid Counsel further submitted that a perusal of Regulation 6 of the Regulations of 2016 refers to public announcement and the manner in which the public announcement is to be carried out. The learned Legal Aid counsel referring to Regulation 6 (2)(b)(i) of the Regulations of 2016 submitted that the publications were required to be carried out in one English and one Regional language newspapers with wide circulation at the location of the registered office and Principal Office, if any, of the Corporate Debtor and any other location where in the opinion of the interim resolution professional, the Corporate Debtor conducts material business operations. The learned Legal Aid Counsel submitted that the Assam Company India Limited

conducted its business of tea plantation in various localities including in the district of Dibrugarh. The publications which were referred to by the learned counsel appearing on behalf of the Petitioner in respect to two English dailies and one Regional language and one Hindi newspaper are newspapers which are not widely circulated within the district of Dibrugarh.

16. The learned Legal Aid Counsel also submitted that the award was passed on 12.11.2016 and as such it was the duty of the Resolution Professional in terms with Section 18 of the Code to collect all information relating to the assets, finances, operations of the Corporate Debtor for determining the financial position of the Corporate Debtor, which also included the dues to the Workmen. The learned Legal Aid Counsel, therefore, submitted that the settled principles of law which gives a clean slate to the resolution applicant whose Resolution Plan has been accepted is subject to proper publication in the manner stipulated in Regulation 6 of the Regulations of 2016.

ANALYSIS AND DETERMINATION:

17. This Court has given its anxious consideration to the respective submissions and had perused the materials on record. It is clear from

the materials on record that prior to the initiation of the Insolvency Proceedings, an Award dated 12.11.2016 was passed on the basis of an amicable settlement between the Management of Maijan Tea Estate with the Respondent, whereby the Management of Maijan Tea Estate was required to make payment of full backwages to the Respondent with effect from the date of dismissal of the Respondent till 12.11.2016. In addition to that, the Management of the Maijan Tea Estate was also required to provide the Respondent, full service benefits, including retirement benefits, etc. Nothing was provided to the Respondent, which, otherwise was required to be complied with within 30(thirty) days from the date of the Award.

Subsequent thereto, on the basis of an application filed by one M/s. SREI Infrastructure (P) Ltd., a proceeding was initiated before the learned National Company Law Tribunal, Guwahati. The Resolution Applicant in the name and style of M/s. BRS Ventures Investment Limited had submitted its Final Resolution Plan, which was duly accepted and was approved by the learned NCLT on 20.09.2018.

18. Contemporaneously, the Respondent who claim to be unaware of the Insolvency Proceeding also filed an application before the learned Labour Court, which was registered and numbered as Misc.Case No. 01/2018. Sometime in the year 2021, as submitted by Mr. A Sharma, the learned counsel for the Petitioner, the objections were filed by the

Petitioner stating *inter alia* that the said claim made on the basis of the Award dated 12.11.2016 stood extinguished in view of the acceptance of the Resolution Plan by the learned NCLT on 20.09.2018.

19. The learned Labour Court after hearing the parties arrived at an opinion that the Respondent had no notice of the said Insolvency Proceedings which was pending before the learned NCLT and passed the impugned order dated 19.04.2021 holding *inter alia* that the Respondent was entitled to an amount of Rs.1,85,175/- as well as other fringe benefits which were required to be paid by the Petitioner company within 2(two) months from the date of the order, failing which proceedings under Section 29 of the Industrial Disputes Act, 1947 would be initiated.

20. This Court has also perused the judgments referred to by the learned counsel appearing on behalf of the Petitioner, more particularly, the judgments in the case of **Satish Kumar Gupta** *(supra)* as well as ***Ghanashyam Mishra and Sons Private Limited*** *(supra)*.

21. The Supreme Court in the case of ***Satish Kumar Gupta*** (supra) observed that once the Resolution Plan is approved by the Committee of Creditors, it shall be binding on all stakeholders, including the

guarantors. It was further mentioned that a successful Resolution Applicant cannot suddenly be faced with undecided claims after the Resolution Plan submitted by him have been accepted, as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the Prospective Resolution Applicant, who would successfully take over the business of the Corporate Debtor. It was further observed that all claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the Corporate Debtor. Paragraph Nos.105 to 107 of the said judgment being relevant are reproduced hereinunder:

> "***105.*** *Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In SBI v. V. Ramakrishnan, this Court relying upon Section 31 of the Code has held: (SCC p. 411, para 25)*
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>> "*25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that*

in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him."

106. *Following this judgment in V. Ramakrishnan case, it is difficult to accept Shri Rohatgi's argument that that part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile Directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, NCLAT judgment being contrary to Section 31(1) of the Code and this Court's judgment in V. Ramakrishnan case, is set aside.*

107. *For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."*

22. This Court also finds it relevant to take note of that in the case of ***Ghanashyam Mishra and Sons Private Limited*** *(supra)*, and more particularly, at paragraph No.102, the effect of a Resolution Plan being approved by the Adjudicatory Authority was spelt out.

Paragraph No. 102, along with its sub-paragraphs being relevant are reproduced hereinunder:

> "***102.*** *In the result, we answer the questions framed by us as under:*
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> ***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.*
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> ***102.2.*** *The 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 the I&B Code has come into effect.*
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> ***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.*
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> ***103.*** *In the light of what has been held by us hereinabove, we now proceed to decide individual matters."*

23. In the backdrop of the above settled proposition of law, it is clear as a noon day that once the Resolution Plan had been duly approved by the Adjudicating Authority under Section 31(1) of the Code, the claims so provided in the Resolution Plan stands frozen and would be binding upon the Corporate Debtor, its employees, members etc. Furthermore, if no claims are submitted, upon the approval of the Resolution Plan, such claim(s) stands extinguished.

24. In the backdrop of the aforementioned proposition of law, let this

Court deal with the facts of the present case with specific reference to the impugned order. A perusal of the impugned order would show that the impugned order can be bifurcated into two parts. One part relates to the ascertainment of the amount the Respondent herein was entitled to as per the Award dated 12.11.2016 and the second part relates to the directions issued by the learned Labour Court directing the Petitioner Company to pay the amount quantified alongwith fringe benefits within a specified period else action would be initiated under Section 29 of the Industrial Disputes Act, 1947.

25. The question arises as to whether the two parts of the impugned order are required to be interfered with by this Court under Article 226 of the Constitution. As regards the first part i.e. the quantification of the entitlement of the Respondent in terms with the Award dated 12.11.2016, there is no serious challenge to the same by the Petitioner. This Court had also perused the impugned order and do not find any gross error or any perversity for interfering with the first part of the impugned Order.

26. Let this Court take the second part of the impugned order as to whether the Petitioner herein could have directed to make payment of the amount of Rs.1,85,175/- along with fringe benefits and upon failure, proceedings under Section 29 of the Industrial Disputes Act,

1947 can be initiated.

27. The law above discussed as held by the Supreme Court in the cases of ***Satish Kumar Gupta*** (supra) and ***Ghanshyam Mishra and Sons Private Limited*** (supra) abundantly makes it clear two aspects. One, that all claims made before the Resolution Professional after the Final Resolution Plan had been approved by the Adjudicating Authority stood freezed and binding on all concerned. The second aspect is that all claims not submitted before Resolution Professional and pursuant to the Final Resolution Plan being approved by the Adjudicating Authority, such claims stood extinguished. Under such circumstances as the claim of the Respondent was admittedly not submitted before the Resolution Professional, the said claim by operation of law and the law well settled stood extinguished.

28. This Court, however, finds it relevant to observe that the extinguishment of the claims by operation of law is based upon the presumption that the Public Notification required to be issued under Regulation 6 of the Regulations of 2016 was issued in the manner stipulated therein. It is relevant to observe that the extinguishment of the claims not submitted is also on the ground that the claimant had an opportunity to submit the claim before the Resolution Professional and having failed to do so, the said claim(s) cannot be allowed at a

later stage after the Final Resolution Plan was approved by the Adjudicating Authority. The natural corollary, therefore, if the Public Notification required to be issued in terms with Regulation 6 of the Regulations of 2016 was not issued in the manner stipulated therein, the claimants would be deemed to have no knowledge of the opportunity to submit their claims and consequentially the binding nature of the Final Resolution Plan approved by the Adjudicating Authority loses the finality attached by operation of law.

29. In the backdrop of the above, if this Court takes note of the case of the Respondent, it is alleged that the Public Notifications was not issued in terms with Regulation 6 of the Regulations of 2016 and as such the Respondent had no notice of the Insolvency Proceedings and consequently could not avail the rights to submit the claims in terms with Regulation 9 of the Regulations of 2016.

30. It is in the opinion of this Court that as the learned NCLT had approved the Final Resolution Plan and under its aegis the Insolvency Proceedings was undertaken and approved, this aspect which is alleged by the Respondent should be adjudicated by the learned NCLT.

31. Under such circumstances, it is the opinion of this Court that the

learned Labour Court could not have directed the Petitioner to pay the amount of Rs.1,85,175/- along with other fringe benefits to the Respondent. Under such circumstances, the second part of the impugned order calls for interference.

32. Accordingly, this Court, therefore, disposes of the instant writ petition with the following observations and directions:

(i). The impugned order dated 19.04.2021 passed in Misc. Case No.1/2018 stands partially interfered with.

(ii). The factual adjudication in the impugned order dated 19.04.2021 as regards the Respondent 's entitlement of an amount of Rs.1,85,175/- along with other fringe benefits in terms with the Award dated 12.11.2016 passed in Reference Case No.04/2016 is not interfered with.

(iii). This Court, however, interferes with the order dated 19.04.2021 in Misc. Case No.01/2018 in Reference Case No.04/2016 *insofar as* there is a direction to make full payment of the amount of Rs.1,85,175/- along with other fringe benefits to the Respondent by the Petitioner company.

(iv). The further direction so passed in the impugned order dated 19.04.2021 that if the amounts directed are not paid within a period of 2(two) months, proceedings under Section 29 of the *Industrial*

Disputes Act, 1947 would be initiated, is also interfered with.

(v). This Court in view of the above observations, grants liberty to the Respondent to approach the learned NCLT to question the finality attached to the Final Resolution Plan only on the ground that the Public Notification required to be issued under Regulation 6 of the Regulations of 2016 was not issued in the manner mandated therein. It is made clear that the Respondent cannot question the finality attached to the Final Resolution Plan on any other ground.

(vi). The case records of the learned Labour Court be returned.

33. Before parting with the record, this Court finds it relevant to observe that the Respondent was a workman in one of the Tea Estates owned by the Petitioner. The Management of the Tea Estate had come to a settlement with the Workman/ Respondent that the backwages from the date of dismissal to the date of Award dated 12.11.2016 would be paid within 30(thirty) days. The Petitioner is a big Industrial House and compared to the Petitioner's magnitude, the workman's ability is minuscule. Even in the instant proceedings, the Respondent had not been able to afford to even defend the present proceedings by himself for which the legal aid counsel had been appointed. This Court is also aware that financially, it may not be possible for the Respondent to approach the learned NCLT as per the

liberty so granted. Considering the above, this Court would request the Petitioner to consider settling the dispute with the Respondent. It is observed and clarified that such settlement if made would not in any manner affect the finality attached to the Final Resolution Plan approved by the learned NCLT. Such settlement would also not create any right upon any third party and shall be strictly construed as act of generosity and magnanimity on the part of the Petitioner.

JUDGE

Comparing Assistant