

**Brief facts of the case**

- TUF Metallurgical Pvt. Ltd.¹ ('TUF') had took over management of Albus India Limited ('Corporate Debtor') as per resolution plan dated 20 May 2019 which was duly approved by NCLT vide order dated 05 November 2019. Thereafter, the corporate debtor got merged into TUF vide NCLT order dated 02 June 2022 with 01 April 2021 as the appointed date.
- During the Corporate Insolvency Resolution Process (CIRP), public advertisement was made inviting claims of creditors in terms of section 15 of Insolvency and Bankruptcy Code, 2016 ('IBC') with last date for submission of claims being 21 January 2019. However, Income tax department did not submit any of its claim till the last date and even thereafter.
- On 02 December 2019, chairman of monitoring committee to implement resolution plan had submitted an intimation regarding approval of resolution plan of Corporate Debtor to the jurisdictional assessing officer.
- Thereafter, on 12 December 2019, the tax department passed an assessment order for AY 2017-18 raising demand of Rs.9.71 crores. Additionally, tax department also passed penalty orders under section 272A, 270A and 270AAC of the Income-tax Act, 1961 ('the Act').
- In response, TUF submitted that the demands were barred and extinguished consequent to approval of resolution plan. However, tax department proceeded with passing of demand order under section 156 without considering the said submission of TUF. Aggrieved by same, TUF filed a writ petition before the Hon'ble Delhi High Court.



- TUF submitted before the Hon'ble court that the assessment / penalty proceedings initiated by the tax department are bad in law so far as it pertains to period prior to conclusion of insolvency proceedings. TUF placed reliance on Hon'ble SC's ruling in the case of ***Ghanashyam Mishra And Sons Private Limited (2021) 9 SCC 657***
- Ld. counsel for tax department submitted that the impugned notices and orders stands on different footing from rest of the creditors and accordingly, claim of revenue shall not stand affected by IBC proceedings.
- Hon'ble Delhi High Court following the ruling of Ghanashyam Mishra and Sons private limited (*supra*) held that once the resolution plan is approved the claims as provided in resolution plan shall stand frozen and will be binding on corporate debtor, employees, all government authorities and other stakeholders.
- Accordingly, the assessment / penalty proceedings initiated for the period prior to conclusion of CIRP post approval of resolution plan shall stand extinguished. Further, the Hon'ble court while adjudicating as above also noted that the argument of Ld. Counsel for tax department that being the state exchequer, it cannot be bound by the resolution process provisions of the code, has been recorded only to be rejected in view of Hon'ble SC's ruling in the case of Ghanashyam Mishra and Sons private limited (*supra*).

