

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated: 10.01.2023

CORAM

**THE HONOURABLE DR. JUSTICE ANITA SUMANTH**

**W.P.No.21174 of 2013 &**  
**M.P.Nos.1 to 4 of 2013**

Aircel Cellular Limited,  
5<sup>th</sup> Floor, Spencer Plaza,  
No.769, Anna Salai,  
Chennai – 600 002. ....Petitioner

Vs

1. Union of India,  
Ministry of Communications & Information Technology,  
Department of Telecommunications,  
(Access Service Cell), Sanchar Bhavan,  
20, Ashok Road,  
New Delhi – 110 001.
2. Telecom Enforcement, Resources & Monitoring Cell, Chennai,  
Ministry of Communications & Information Technology,  
Department of Telecommunications,  
through its Director,  
III Floor, Kellys Telephone Exchange Building,  
22, Kellys Road, Chennai – 600 010.
3. Deputy Director General,  
Telecom Enforcement, Resources & Monitoring Cell, Chennai  
III Floor, Kellys Telephone Exchange Building,

22 Kellys Road, Chennai – 600 010. ....Respondents  
**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records comprised in demand notice bearing Ref.DDGTERMCHN/CAF AUDIT/SPECIAL/AIRCEL/FEBRUARY 2012/21 dated 18.01.2013, as modified by demand notice bearing Ref.DDGTERMCHN/SPECIALAUDIT/2012/24 dated 07.06.2013 issued pursuant thereto, as also Clauses 13(ii) of the License Agreement dated 30.11.1994, 5.5 of the amendment dated 12.08.2022 and clause 10.9 of the amendment dated 25.11.2004 of the license granted to the petitioner for the Chennai Metro Circle and the impugned circular No.842-725/2005/157 dated 23.03.2009, to the extent impugned penalty in terms of the aforesaid demand notices are premised thereupon, and quashing the same as wholly illegal and unconstitutional.

For Petitioner : Mr. Vishnu Mohan

For Respondents : Mr.R.Rajesh Vivekananthan  
Deputy Solicitor General

**ORDER**

Mr.Vishnu Mohan, learned counsel appearing for the petitioner would submit that with the approval of the resolution plan on 09.06.2020 by the National Company Law Tribunal (in short 'NCLT'), Mumbai Bench-II, the claims

of the respondents, that is, the Department of Telecommunications have been duly taken note of by the NCLT.

2. He draws attention to internal page 19 of order dated 09.06.2020, wherein, the claims of the operational creditors including Government dues (including the dues of the Department of Telecommunications) was quantified at an amount of Rs.2,703.96 Crores. From, and out of the same, an amount of Rs.27.85 Crores was admitted, and the amount provided under the plan is Rs.0.25 Crores, being 0.01% of the amount claimed.

3. The Hon'ble Supreme Court, in the case of *Ghanshyam Mishra and Sons Private Limited Vs Edelweiss Asset Reconstruction Company Limited* [2021 (9) SCC 657], had considered the impact of a resolution plan once duly approved by the adjudicating authority in terms of Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (in short 'Code'). At paragraphs 65 to 68, the Hon'ble Bench states as follows:

*“58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code*

*is, revival of the Corporate Debtor and to make it a running concern.*

*59. The resolution plan submitted by successful resolution applicant is required to contain various provisions, viz., provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in subsection (1) of section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with sub section (1) of section 53 in the event of a liquidation of the Corporate Debtor. Explanation 1 to clause (b) of sub section (2) of Section 30 of the I&B Code clarifies for the removal of doubts, that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the Corporate Debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (e) of subsection (2) of Section 30 of I&B Code also casts a duty on RP to examine, that the resolution plan does not contravene any of the provisions of the law for the time being in force.*

*60. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal, that it requires RP to prepare an information memorandum containing various details of the Corporate Debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts*

*of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the Corporate Debtor towards them are required to be contained in the information memorandum.*

*61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in subsection (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.”*

4. A similar issue was considered by the Hon'ble Supreme Court in the case of *Ruchi Soya Industries Limited Vs Union of India* [2022 (6) SCC 343]. The ratio of the judgment in *Ghansyam Mishra* was noticed and applied in that matter as well.

5. The distinction between the case of *Ruchi Soya Industries Limited* (Supra) and the present matter is that in the former, the Union of India had not

laid any claim before the Committee of Creditors, leading the Court to observe at para 11, as follows:

*“11. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by Respondent 2 after public announcements were issued under Sections 13 and 15 IBC. As such, on the date on which the resolution plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the resolution plan, would survive.”*

6. Thus, once the resolution plan stands approved by the NCLT, all claims stand frozen, and no claim, which is not a part of the resolution plan, survives. In the present case, the claim of the respondents has not only been noted, but also has been accepted, in part.

7. Recording the above, this writ petition is closed. No costs. Consequently, connected miscellaneous petitions are closed.

kbs

**10.01.2023**

Index : Yes / No  
Speaking Order/Non-Speaking Order

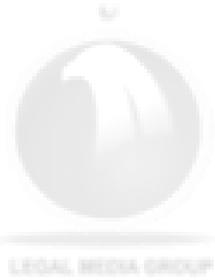
To

1. Union of India,  
Ministry of Communications & Information Technology,  
Department of Telecommunications,

(Access Service Cell), Sanchar Bhavan,  
20, Ashok Road, New Delhi – 110 001.

2. Telecom Enforcement, Resources & Monitoring Cell, Chennai,  
Ministry of Communications & Information Technology,  
Department of Telecommunications,  
through its Director,  
III Floor, Kellys Telephone Exchange Building,  
22, Kellys Road, Chennai – 600 010.

3. Deputy Director General,  
Telecom Enforcement, Resources & Monitoring Cell, Chennai  
III Floor, Kellys Telephone Exchange Building,  
22 Kellys Road, Chennai – 600 010.



**LEGALERA**  
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

**Dr. ANITA SUMANTH, J.**

kbs

**W.P.No.21174 of 2013 &**  
**M.P.Nos.1 to 4 of 2013**

**10.01.2023**