



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21289 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

| | | |
|------------------------|-----|----|
| Approved for Reporting | Yes | No |
| | | |

TECHNOVAA PLASTIC INDUSTRIES PVT. LTD.

Versus

**ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE, GANDHINAGAR
& ORS.**

Appearance:

MR. M.R.BHATT, SR.ADVOCATE WITH MS SHAILEE S JOSHI(11582) for
the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 3,4

MS MAITHILI D MEHTA(3206) for the Respondent(s) No. 1,2

CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 09/04/2025

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE D.N.RAY)

1. Heard learned Senior advocate Mr.M.R.Bhatt with Ms. Shailee S. Joshi appearing on behalf of the Petitioner; learned Senior Standing Counsel Ms. Maithili D. Mehta for the Respondent No. 1 & 2 and learned Senior Standing Counsel Mr. Varun K. Patel for the Respondent No. 3 & 4.



2. Rule returnable forthwith. Learned Senior Standing Counsel Ms. Maithili D. Mehta waives service of notice of rule for the Respondent Nos.1 & 2, and learned Senior Standing Counsel Mr. Varun K. Patel waives service of notice of rule for the Respondent No. 3 & 4. With the consent of the learned advocates for the respective parties, the matter is taken up for hearing, as the issue involved is quite brief.

3. The brief facts of the case are as follows:

3.1 The Petitioner is a company engaged in the business of manufacturing plastic film. Rassendra Chem Export Private Limited, acting as an operational creditor, filed an application [CP (IB) 189 of 2018] under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") against the Petitioner-Corporate Debtor before the National Company Law Tribunal ("NCLT"), Ahmedabad.

3.2 The NCLT, by an order dated 12.11.2018, admitted the said



application and imposed a moratorium in terms of Section 14 of the IBC. Consequently, CIRP was initiated against the Petitioner company.

3.3 By the order dated 12.11.2018, Mr. Narayan Gajanan Vidvan was appointed as the Interim Resolution Professional ("IRP"). The IRP, in accordance with Section 15 of the IBC, issued a public announcement and collated the claims submitted by the creditors.

3.4 In compliance with Section 21 of the IBC, the Committee of Creditors ("CoC") was constituted on 07.12.2018, consisting of a sole financial creditor, namely, Bank of Baroda. Thereafter, the IRP was replaced, and Mr. Vijay P. Lulla was appointed as the Resolution Professional ("RP") by way of an order passed by the NCLT on 13.06.2019.

3.5 The RP subsequently issued an invitation for Expression of Interest ("EOI") from eligible prospective resolution applicants for submission of resolution plans. In response, four EOIs were



received. After due deliberations, the CoC, in its meeting held on 19.09.2019, approved the resolution plan submitted by Kankriya Enterprises Private Limited with 100% voting in its favor.

3.6. Upon approval of the resolution plan by the CoC, the RP filed Interlocutory Application No. 617 of 2019 in CP(IB) No. 189 of 2018 before the NCLT, seeking approval of the resolution plan under Section 31 of the IBC. The NCLT, by an order dated 04.09.2020, after a detailed consideration, approved the resolution plan, rendering it effective from the said date.

3.7 The NCLT, in its order, recorded that the resolution plan provided for the settlement of claims of various stakeholders, including statutory authorities. In paragraph 12 of its order, the NCLT held as follows:

"12. In view of the above, the revised 'Resolution Plan' annexed in IA 617 of 2019 filed in CP(IB) no. 189 of 2018 is hereby approved, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including Resolution Applicant."



3.8. The Respondent No. 4, namely, the National Faceless Assessment Centre, issued penalty orders under various provisions of the Income Tax Act, 1961, as follows:

- Under Section 270A for the Assessment Year 2017-18, dated 01.04.2022;
- Under Section 271(1)(c) for the Assessment Year 2016-17, dated 01.04.2022; and
- Under Section 271AAC(1) for the Assessment Year 2017-18, dated 01.04.2022.

3.9 Aggrieved by the demand notices issued by the Respondents in respect of the period prior to 04.09.2020, the Petitioner has filed the present Writ Petition under Article 226 of the Constitution of India, seeking the following reliefs:

“a) Issue a writ, order or direction in the nature of certiorari or any other appropriate writ quashing and setting-aside the impugned demand notices raised pursuant to passing of Assessment Orders and penalty orders [(Annexure-A (Colly))] and any other demand raised or to be raised for the period prior to 04.09.2020;

(b) Issue a writ, order or direction in the nature of mandamus or any other appropriate writ quashing and setting aside all proceedings including but not limited to Assessment Orders, Penalty Orders and Demand Notices over and above the Demand Notices annexed as Annexure-A (Colly), initiated or to be initiated by the Respondents pertaining to the period prior to 04.09.2020;



(c) Pending final hearing and admission of the matter, pass an order restraining the Respondents from enforcing demand and be further pleased to stay the proceedings initiated in relation to the period prior to 04.09.2020;

(d) Pass any such other writ or order(s) as it may deem fit and proper in the interest of justice.”

4. Learned Senior Advocate Mr. M.R.Bhatt with learned advocate Ms.Shailee S.Joshi for the Petitioner submitted that notices have been issued by the Department to the Petitioner for the period prior to 04.09.2020. whereas, the NCLT by virtue of the order dated 04.09.2020 has approved the Resolution Plan of one, Kankariya Enterprises Pvt. Ltd. under Section 31 of the IBC. Mr. Bhatt, learned Senior Advocate, submitted that in view of the settled law in the subject as held by the Hon’ble Supreme Court of India in the case of **Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company** reported in **(2021) 9 SCC 657**, the tax dues of the Department, unless futuring in the Resolution Plan as due and payable, shall be extinguished and no demand can be raised for the period prior to 04.09.2020, i.e. the date of NCLT order approving the Resolution Plan.

5. Ms.Maithili Mehta and Mr.Varun Patel, learned Senior Standing Counsels for the respective Respondents are unable to controvert the aforesaid facts and the applicability of the ratio of Edelweiss (Supra) to the facts of the case.

6. **DISCUSSION & FINDINGS :-**

6.1 Regarding settlement of existing claims, Clause 3.8 of the Resolution Plan reads as under:-

| Action | Time line |
|--|---|
| <i>Capital Reduction of the existing equity share capital to ZERO</i> | <i>The existing capital shall be treated as Zero on the date of approval of the resolution plan and shares allotted in the name of erstwhile shareholders shall stand cancelled upon approval of resolution plan without any consideration.</i> |
| <i>Subscribing to equity shares and optionally convertible debentures to be issued by the Corporate Debtor and Intercompany Deposits</i> | <i>Within 60 Days of the approval of by NCLT Order</i> |
| <i>Payment of Workmen Dues</i> | <i>Within 60 Days of the approval of by NCLT Order</i> |
| <i>Payment to CIRP Cost</i> | <i>Within 60 Days of the approval of by NCLT Order</i> |
| <i>Payment to Financial Creditors</i> | <i>Within 60 Days of the approval of by NCLT Order</i> |
| <i>Tranche 1: 30% of Financial Outlay of Rs. 41,59,40,000 (after</i> | <i>Within 120 days of the approval of</i> |



| | |
|--|---|
| <i>adjustment for bid security already deposited) i.e. Rs. 8,17,82,000/- plus Bid security of Rs. 4,30,00,000/- Total 12,47,82,000/-</i> <i>Tranche 2: 30% of Financial Outlay of Rs. 41,59,40,000 i.e. Rs. 12,47,82,000/-</i> <i>Tranche 3: 40% of Financial Outlay of Rs. 41,59,49,000 i.e. Rs. 16,63,76,000/-</i> | <i>by NCLT Order</i> <i>Within 180 days of the approval of by NCLT Order</i> |
| <i>Payment of Statutory Dues and Operational Creditors</i> | <i>Within 60 days of the approval of by the NCLT Holders.</i> |

Note: The period of lockdown in any form, if any, as may be announced by the Government of India or the National Disaster Management Authority or the State Authorities, as the case may be, shall stand excluded for computation of the 60, 120 and 180 day time periods mentioned in the Table.

STRUCTURE FOR ACQUISITION OF CONTROL OVER THE CORPORATE DEBTOR BY THE RESOLUTION APPLICANTS

The present equity capital is envisaged to be written down to zero. Post such write off, the Resolution Applicant propose to infuse Rs. 17,72,80,000/- as equity and control 100% stake in the Corporate Debtor.

6.2 Further, Annexure- 4 to the Resolution Plan which has been approved by the NCLT pertains to “Extinguishment of Claims”. Clause 9 thereof reads as under:-

“9. Any and all other claims (whether contingent or crystallised, known and unknown, disputed or undisputed, asserted or unasserted, present or future and whether or not filed) of Governmental Authorities in relation to all Taxes, duty, penalties, interest, fines, cesses, unpaid TDS/TCS which the Corporate Debtor was or may be liable to pay, the period prior to the Effective Date shall stand extinguished on the Effective Date by virtue of the order of the NCLT approving the Resolution Plan and the Corporate Debtor should not be liable to pay any amount against such demand, but for the provision made in Annexure-2 (Financial Plan). All assessment/appellate or other proceedings pending on the Effective Date relating to period prior to the Effective date, shall stand terminated and all consequential liabilities, if any should be deleted and waived off and should be considered to be not payable by the Corporate Debtor by virtue of the order of the NCLT. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to any period prior to the Effective Date and pending on that date, shall be considered deleted and should not be proceeded against the Corporate Debtor. Post Effective Date, no re-assessment/revision or any other proceedings under the provisions of Income-tax Act, 1961 should be initiated on the Corporate Debtor in relation to the period prior to Effective Date and any consequential demand should be considered non-existing as deleted and waived and not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of IB process or otherwise should not be revived post the Effective Date.

6.3 From the aforesaid, it is crystal clear that after approval of the Resolution Plan by the NCLT through its order dated 04.09.2020, no claim other than what subsists under the Resolution Plan itself is

required to be honored by the successful resolution applicant and all such statutory claims which are not part of the Resolution Plan stands extinguished and no proceedings in respect of due can be continued in view of Section 31 of the IBC. In the recent judgment of the Hon'ble Apex Court in the case of **Vaibhav Goel and Anr. Vs. Deputy Commissioner of Income Tax & Anr.** reported in **2025 INSC 375**, it has been held as under :-

"7. Section 31(1) of the IB Code provides for the legal effect of approval of the Resolution Plan. Section 31(1) reads thus:

*"(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, **it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed] guarantors and other stakeholders involved in the resolution plan.***

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

(emphasis added)

The words starting from 'including' and ending with 'owed' were incorporated in the IB Code with effect from 16th August 2019.

Section 31(1), as it stood before the amendment mentioned above and after the amendment, came for consideration in the decision of this Court in the case of **Ghanashyam Mishra and Sons Pvt. Ltd.** Paragraph 102 of the said decision reads thus:

"102. In the result, we answer the questions framed by us 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 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.

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."

(emphasis added)

8. In view of the declaration of law made by this Court, all the dues including the statutory dues owed to the Central Government, if not a part of the Resolution Plan, shall stand extinguished and no proceedings could be continued in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 of the IB Code. In this case, the

income tax dues of the CD for the assessment years 2012-13 and 2013-14 were not part of the approved Resolution Plan. Therefore, in view of sub-section (1) of Section 31, as interpreted by this Court in the above decision, the dues of the first respondent owed by the CD for the assessment years 2012-13 and 2013-14 stand extinguished.

12. Once the Resolution Plan is approved by the NCLT, no belated claim can be included therein that was not made earlier. If such demands are taken into consideration, the appellants will not be in a position to recommence the business of the CD on a clean slate. On this aspect, we may note what is held in paragraph 107 of the decision of this Court in the case of **Committee of Creditors of Essar Steel India Ltd.** Paragraph 107 reads thus:

"107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] 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."

(emphasis added)



7. In view of the binding ratio of the aforesaid decisions of the Hon'ble Supreme Court which are squarely applicable to the facts of the present case, the impugned Demand Notices raised pursuant to the Assessment Orders and Penalty Orders (Annexure "A" Colly to the present petition) are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

BINA SHAH