

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 1593 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR.JUSTICE D.N.RAY**

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Approved for Reporting	Yes	No

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AMW AUTO COMPONENT LIMITED**Versus****PRINCIPAL COMMISSIONER OF INCOME TAX RAJKOT 1**

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Appearance:**MR B S SOPARKAR(6851) for the Petitioner(s) No. 1****KARAN G SANGHANI(7945) for the Respondent(s) No. 1**

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR.JUSTICE D.N.RAY****Date : 11/03/2025****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE D.N.RAY)**

1. Heard learned advocate Mr.B.S.Soparkar for the Petitioner and learned Senior Standing Counsel Mr. Karan G. Sanghani for the Respondent.

2. Rule returnable forthwith. Learned Senior Standing Counsel Mr. Karan G. Sanghani waives service of the notice of the rule on



behalf of the Respondent. With the consent of the learned advocates for the respective parties, the matter is taken up for hearing, as the issue involved is very short.

3. The petition has been filed under Article 226 of the Constitution of India with the following prayers :-

“a) Quash and set aside the impugned notice u/s 263 dated 13.01.2025 at ‘ANNEXURE – A’ to this petition;

b) pending the admission, hearing and final disposal of this petition, to stay further proceedings pursuant to the impugned notice;

c) any other and further relief deemed just and proper be granted in the interest of justice;

d) to provide for the cost of this petition.”

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

4.1 The Petitioner is a registered company, *inter alia*, engaged in the business of manufacturing components for general engineering and automotive industries. The Petitioner filed the return of income on 30.11.2015 for the Assessment Year 2015-16, declaring loss of Rs. 36,52,09,196/-.



4.2 The case was reopened by the issuance of a notice dated 31.03.2022 under Section 148 of the Income Tax Act, 1961 (“the Act”). The assessment was completed under Section 147 read with Section 144 and 144B of the Act on 06.03.2023, determining the total income of Rs. 42,46,54,081/-.

4.3 The Petitioner was subjected to the insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (“**IBC Code**”), wherein, a Corporate Insolvency Resolution Process (“CIRP”) was initiated by the Indian Overseas Bank under Section 7 of the IBC Code, which was admitted by the Adjudicating Authority vide order dated 01.09.2020.

4.4 An Interim Resolution Professional was appointed by the Hon’ble Tribunal, who made a public announcement in accordance with Section 13, 15 and other relevant provisions of the Code read with the Regulation 6 of the Insolvency Regulations, 2016, thereby inviting claims from the various creditors of the Petitioner.

4.5 Further, under the CIRP, the Resolution Plan of Steel Wheels



Limited for the revival of the Petitioner was approved by the Hon'ble Tribunal vide order dated 12.10.2023 under Section 30(6) of the Code. The said Resolution Plan provided for the waiver and extinguishment of all the unassessed/assessed tax liabilities for the period prior to the NCLT approval date.

4.6 The Respondent has issued the impugned notice dated 13.01.2025, under Section 263 of the Act, seeking to revise the assessment order dated 06.03.2023 for the Assessment Year 2015-16.

4.7 Challenging the legality of the impugned notice dated 13.01.2025, the Petitioner has filed this Petition.

5. Mr. B.S.Soparkar, learned advocate appearing on behalf of the petitioner submitted that on the approval of the Resolution Plan under Section 31 of the IBC, all dues of the Corporate Debtor except those which have been specifically provided for in the Resolution Plan would stand extinguished in terms of the provisions of the IBC and the decisions of the Hon'ble Apex Court in **The Committee of**



Creditors of Essar Steel Ltd. Vs. Satishkumar Gupta reported in **(2020) 8 SCC 531** and **Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd.**, reported in **(2021) 9 SCC 657**. Mr. Soparkar, learned advocate submitted that in the present case, the tax dues stand extinguished in terms of the Resolution Plan .

5.1 Mr.Soparkar, learned advocate further contended that, even on merits, the impugned notice under Section 263 of the Act is bad, inasmuch as, the provisions of Section 92BA(i) have been omitted from the statute vide Finance Act, 2017 and therefore, there could be no occasion to refer the matter to the Transfer Pricing Officer and therefore, the Assessment Order dated 06.03.2023, which the impugned notice seeks to revise, can neither be said to be erroneous in law nor prejudicial to the interest of the Revenue.

5.2 Mr. Karan G.Sanghani, learned Senior Standing Counsel for the Respondent-Department is not in a position to controvert the position of law as far as the extinguishment of the tax dues are concerned in terms of Section 31 of the IBC. He however submits

that in view of the said position, this Court may not enter into the merits of the issuance of notice under Section 263 of the Act.

6. **DISCUSSION & FINDINGS :-**

6.1 A perusal of the Resolution Plan which came to be approved on 12.10.2023 by the learned NCLT would reveal the following provisions as evident from the relevant portion extracted below:-

“EFFECT OF THE RESOLUTION PLAN”

8.1 In terms of Section 31(1) of the IBC, this Resolution Plan 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 of the Corporate Debtor on and from the NCLT Approval Date.

8.2 Upon approval of this Resolution Plan by the NCLT, the following settlements shall be deemed to have been approved by the NCLT and be binding in terms of Section 31(1) of the IBC”

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(ii) It is also clarified that any Tax liabilities pertaining to a period prior to and Including the NCLT Approval Date (including penalties levied or leviable, prosecution and interest), even if such past liability pertaining to the aforesaid period arises any time in the future post the NCLT Approval Date whether assessed or unassessed or determined or undetermined, by the relevant Governmental Authority shall be deemed to be extinguished and written off with effect from the NCLT Approval Date.

(jj) With effect from the NCLT Approval Date, the Corporate Debtor shall be entitled to carry forward and set off all the accumulated Tax losses and unabsorbed depreciation of the Corporate Debtor for the maximum period as provided in the relevant statute.

(kk) With effect from the NCLT Approval Date, all benefits, incentives, subsidies, schemes, policies, etc., which the Corporate Debtor was entitled to and all such benefits thereunder (including any EPCG Schemes) shall remain vested with the Corporate Debtor, notwithstanding any change in ownership or control on account of this Resolution Plan and any penalties or liabilities owing to non-compliance thereunder or pursuant to any notices and Proceedings for the period prior to the NCLT Approval Date shall stand waived and extinguished in entirety. The Corporate Debtor shall file requisite applications for the same as may be required.

(ll) All liabilities and obligations relating to any adjustment to income / recovery proceeding/ penalty proceedings u/s 270A of the Income Tax Act, 1961 or any other provisions of thereunder on account of income tax Proceedings outstanding for FY 12-13 or any other assessment year/financial year upto the NCLT Approval Date, shall stand extinguished.

(mm) On and from the NCLT Approval Date, all outstanding TDS demands against the Corporate Debtor for various years including TDS demand amounting to INR 0.65 cr shall stand waived and extinguished in entirety.

(nn) With effect from the NCLT Approval Date, any prosecution risk on account of delayed/non-deposit of TDS/TCS for the period prior to the NCLT Approval Date shall stand waived and extinguished and in the event and Proceedings have been initiated pursuant to the aforesaid, the same shall stand extinguished and abated. The Corporate Debtor shall file necessary applications as may be required to give effect to the aforesaid and as may be required under the provisions of Applicable Laws. It is further clarified that such filings shall not be condition to the implementation of this Plan or affect the timelines for



Implementation in any manner whatsoever.

(oo) On and from the NCLT Approval Date, all unassessed / assessed Tax liabilities for period prior to the NCLT Approval Date, in relation to any dues arising out of withholding tax compliance including penalties, fees, interest, levies, etc. or any other charges whatsoever arising of assessment, re-assessment, search and seizure, revision, rectification, under section 201,250, 263, 264, 220(2) of the Income Tax Act, 1961 shall stand waived and extinguished.

(pp) On and from the NCLT Approval Date, any adverse tax implication on the Corporate Debtor on account of past transactions with related parties including section 40A(2b) of the Income Tax Act, 1961 shall stand waived and extinguished and no Proceedings shall be initiated by any Person in this regard for any transaction done during the period prior to the NCLT Approval Date. The Corporate Debtor shall necessary applications as may be required to give effect to the aforesaid and as may be required under the provisions of Applicable Laws. It is further clarified that such filings shall not be condition to the implementation of this Plan or affect the timelines for implementation in any manner whatsoever.

(qq) On and from the NCLT Approval Date, any adverse tax implication under section 41(1) of the Income Tax Act, 1961 on account of write off of trade payables shall stand waived and extinguished given that no tax deduction was claimed for such amounts in the past years and no Proceedings shall be initiated by any Person in this regard for the period prior to the NCLT Approval Date.

7. From the perusal of the above, it is evident that all tax liabilities, assessed and unassessed under the Income Tax Act, 1961 “shall stand waived and extinguished”.

8. In Essar (Supra), the Hon'ble Apex Court has held as under:-

"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."

9. In **Edelweiss** (Supra), the Hon'ble Apex Court 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.”

10. Therefore, applying the decisions of the Hon’ble Apex Court to the facts of the present case, it is clear that on the complete extinguishment of all tax liabilities of the Corporate Debtor upon the approval of the Resolution Plan on 12.10.2023, there could be no occasion whatsoever for the respondents to issue the impugned notice under Section 263 of the Act on 13.01.2025, seeking to revise the Assessment Order dated 06.03.2023 for the Assessment Year 2015-16. In such view of the matter, the merits of the impugned notice under Section 263 of the Act have become academic and need



not be ventured into by this Court. Resultantly, the petition succeeds and the impugned notice dated 13.01.2025 under Section 263 of the Act is 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