



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CIVIL APPLICATION NO. 1195 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 1195 of 2023**

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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**SURYA EXIM LIMITED THRO DIRECTOR BHAWANI SINGH
Versus
UNION OF INDIA & ORS.**

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Appearance:

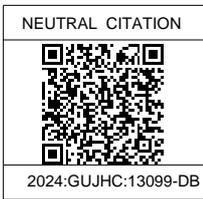
MR DHINAL A SHAH(12077) for the Petitioner(s) No. 1
THAKKAR AND PAHWA ADVOCATES(1357) for the Petitioner(s) No. 1
KARAN G SANGHANI(7945) for the Respondent(s) No. 2,3
NOTICE UNSERVED for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and**

**HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 23/01/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

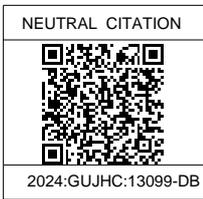
1. Heard learned advocate Mr. Dhinal Shah for the petitioner and learned advocate Mr. Karan Sanghani for respondent Nos. 2 and 3.
2. Rule returnable forthwith. Learned advocate Mr. Karan Sanghani waives service of notice of rule for respondent Nos. 2 and 3.
3. Having regard to the controversy narrated in narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.



4. The petitioner has prayed for the following reliefs:

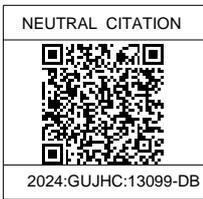
“(A) YOUR LORDSHIPS be pleased to hold and declare that the respondents are legally prohibited from taking any coercive action against the petitioner Corporate Debtor in respect of any claims/offences that may have taken place prior to the Effective Date and are prohibited to continue the proceedings under the Income Tax Act;

(B) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, quashing and setting aside the impugned notice(s) dated 12.12.2022 (Annexure A Colly) issued by respondent no.2 and all further proceedings in pursuance thereto as being illegal, without any authority of law, jurisdiction and also violative of the scheme of the IB Code.



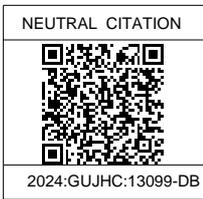
(C) Your Lordships be pleased to stay the implementation, operation and execution of impugned notice(s) dated 12.12.2022 (Annexure A Colly) issued by the respondent No.2, pending the admission, hearing and final disposal of this petition.”

5. It appears that the respondent passed the assessment order on 13.03.2023 under section 147 read with section 144 of the Income Tax Act,1961 [for short 'the Act'] for the Assessment Year 2018-19 after issuance of notice by this court vide order dated 08.02.2023.
6. The petitioner therefore, challenged the assessment order by draft amendment which was granted vide order dated 11.04.2023. The petitioner thereafter filed another amendment to join Assistant Commissioner



of Income Tax, Central Circle 2, Surat as respondent No.3 which was also granted by this Court vide order dated 08.08.2023.

7. Brief facts of the case are that the petitioner-company was subjected to insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 ['IBC' for short] as application (CP(IB) No. 247/2020) under section 7 of the IBC was preferred by the Financial Creditor-State Bank of India on 03.02.2021. The petition of the bank was admitted and the Creditor Insolvency Resolution Process ('CIRP' for short) was initiated by the National Company Law Tribunal (NCLT) and one Mr. Sunilkumar Kabra was appointed as Interim Resolution Professional ('IRP' for short) on 05.02.2021 by the NCLT.



7.1 On 05.02.2021, IRP made a public announcement of the CIRP of the petitioner company and called upon its creditors to submit its claim with requisite proofs. The Committee of Creditor [COC] was also formed by the IRP on 26.02.2021.

7.2 In the fourteenth COC meeting on 14.12.2021, the members of the COC approved the resolution plan of resolution applicant- M/s. Agrawal Coal Corporation Private Limited.

7.3 The NCLT, by order dated 01.07.2022, approved the application filed by the IRP under section 13(6) of the IBC and resolution plan submitted by the resolution applicant was approved and following order was passed:



“ORDER

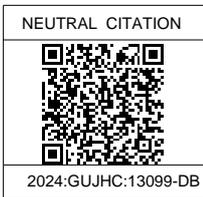
I. Application is allowed.

II. The Resolution Plan of M/s. Agarwal Coal Corporation Private Limited for Corporate Debtor i.e. M/s Surya Exim Limited, stands allowed as per section 30(6) of the IBC, 2016.

III. The Resolution Applicant claimed various reliefs and concessions in the resolution plan. However, we grant the reliefs in the following manner and to this extent;

a. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior to CIRP against the Corporate Debtor shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall also stand extinguished against the Corporate Debtor after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;

b. On the effective date, all claims, except provided in the plan, of the suspended management, erstwhile directors, and erstwhile shareholders shall stand



permanently extinguished;

c. On the effective date and with effect from the appointed date, all encumbrances on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013; and laws in force as applicable;

d. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues.

e. As regard to relief prayed under various provisions of Income Tax Act, 1961, the corporate Debtor / Resolution Applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the Resolution Applicant in accordance with the provisions of Income Tax Act, 1961.

f. The Resolution Applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;

g. The RP shall complete the accounting entries to give effect to



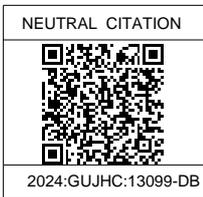
the resolution plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013;

h. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the Corporate Debtor;

i. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;

j. The Resolution Applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;

k. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the



restructuring of capital shall be binding on them. This order shall be treated as evidence of compliances of all formalities as may be required in this regard under the provisions of the Companies Act, 2013.

1. For changing of name and address of the Corporate Debtor the consent of the member/ shareholders is deemed to have been obtained and the resolution applicant shall approach the concerned authorities under provisions of the Companies Act, 2013 for complying with the procedural aspects.

m. On the effective date and with effect from the appointed date, the entire equity shares held by the existing shareholders shall stand fully extinguished as a part of this Resolution Plan (standalone capital reduction). The face value of the equity shares so cancelled shall stand transferred to the capital reserve of the Corporate Debtor. No amounts shall be payable, in addition to the amount mentioned in the Resolution Plan towards the extinguishment of all the equity shares of such existing shareholders.

IV. The approved Resolution Plan' shall become effective from the date of passing of this order.

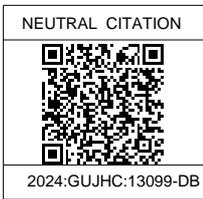
V. The order of moratorium dated 03.02.2021 passed by this Adjudicating Authority



under section 14 of IBC, 2016 shall cease to have effect from the date of passing of this order.

- VI. The RP shall forthwith send a copy of this order to the participants and the Resolution Applicant(s).
- VII. The RP shall forward all records relating to the conduct of the CIRP and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- VIII. Accordingly, IA 18 of 2022 in CP (IB) 247 of 2020 is allowed and stands disposed of in terms of the above directions.
- IX. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities."

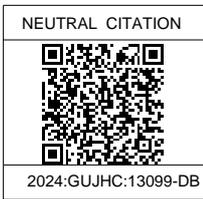
7.4 It is the case the petitioner that as per clause 12.3 (viii) of the resolution plan as approved by the NCLT, the resolution applicant will not be liable in respect of any reassessment, reopening, revision, review or other proceedings under the direct and indirect



statutes. Clause 12.3 (viii) of the resolution plan reads as under:

“(viii). There being no liability of the RA in respect of any reassessment, reopening, revision, review or other proceedings under the direct and indirect taxes statutes, or any other law or statute including for any period prior to the Effective Date.”

7.5 The petitioner has therefore approached this Court by preferring the petition on the ground that the resolution applicant is not liable for any income tax proceedings prior to the effective date i.e. 01.07.2022. The petitioner has therefore challenged the notices issued by the Commissioner of Income Tax (Appeals) in respect of the assessment years 2013-14 to 2018-19 for fixing the hearing of appeals filed by the petitioner against

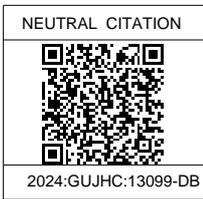


the assessment orders for the respective assessment years.

7.6 During the pendency of this petition, respondent No.3 passed the assessment order under section 147 read with section 144 on 13.03.2023 and issued the demand notice under section 156 of the Act raising the demand of Rs. 28,98,48,379/-.

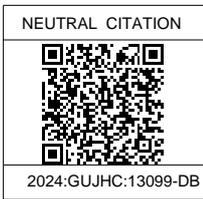
7.7 The petitioner therefore, has preferred the draft amendment and prayed for the following reliefs:

“(CC) Your Lordships be pleased to stay the implementation, operation and execution of the order and notice dated 31.03.2022 passed by respondent No.2 u/s.148A(d) and 148 of the Act (Annexure-F) Colly, order dated 13.03.2023 (Annexure L) made by respondent No.1, Notice dated

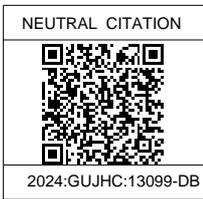


13.03.2023 issued by respondent No.2 u/s. 156 of the act (Annexure M), notice dated 20.03.2023 (Annexure N) issued by respondent No.2, pending the admission, hearing and final disposal of this petition.”

7.8 It is the case of the petitioner that the notices issued under section 148 along with order under section 148A(d) dated 31.03.2022 and the proceedings pursuant to such notice stands extinguished after the order passed by the NCLT on 01.07.2022 approved the resolution plan and therefore, no order would have been passed by respondent No.3 on 13.03.2023 and notice of demand dated 20.03.2023 could not have been issued by the respondent No.3 as the entire reassessment proceedings stands extinguished in view of the provision of section 31 read with section 238 of the IBC.

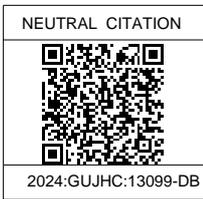


8. Learned advocate Mr. Dhinal Shah appearing for the petitioner therefore submitted that the CIT (A) could not have issued the notices for hearing as the pending proceeding before the CIT (Appeals) after 01.07.2022 would lapse and the respondent No.3 could not have passed an order on 13.03.2023 and also could not have issued the notice under section 156 of the Act, 1961 on 23.03.2023 pertaining to the assessment order 2018-19 as the re-assessment notices issued prior to 1st July, 2022 would not survive and the entire re-assessment proceedings would lapse and would stand extinguished as per the provision of the IBC.



8.1 In support of his submissions reliance was placed on the decision of the Hon'ble Apex Court in case of **Ghanshyam Mishra & Sons (P) Ltd vs. Edelweiss Asset Reconstruction Co. Ltd** reported in (2021) 9 SCC 657.

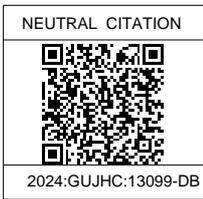
8.2 Learned advocate Mr. Shah also referred to and relied upon the decision of this Court in case of **M/s. Ultratech Nathdwara Cement Ltd vs. State of Gujarat** dated 02.08.2023 in Special Civil Application No. 7120/2021 and the Delhi High Court in case of **Tata Steel Limited vs. Deputy Commissioner of Income Tax** dated 31.10.2023 in Writ Petition (Civil) No. 13188/2018 and the Bombay High Court in case of **Murli Industries Limited through its Dy. Ex. Director vs. Assistant**



Commissioner of Income Tax and ors dated 23.12.2021 in Writ Petition No. 2948/2021.

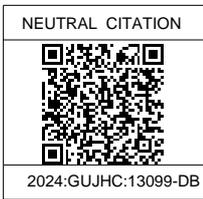
8.3 Referring to the decision of the Apex Court in case of Ghanshyam Mishra & Sons (P) Ltd (supra) it was submitted that this Court, Delhi High Court and the Bombay High Court have followed the decision of the Apex Court in the facts of the respective cases. It was held that the reassessment proceedings which were initiated prior to the date of passing of the order by the NCLT approving the resolution plan would not survive.

8.4 Reference was made to the decision of the Delhi High Court in case of Murli Industries Limited through its Dy. Ex.



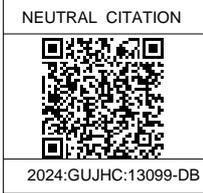
Director (supra) wherein the Bombay High Court in the facts of said case held as under:

"21. We may add here that the Explanation to Section 147 of the Income Tax Act, 1961 creates a deeming fiction of cases where the income chargeable to tax has escaped assessment. Clause (a) deals with a situation where no return of income has been furnished by the assessee although his total income exceeded maximum amount which is not chargeable to income tax. Clause (b) deals with a situation where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowances or relief in the return. There are other Clauses also that would indicate the reasons for escaping the assessment. The point is, once the public announcement is made

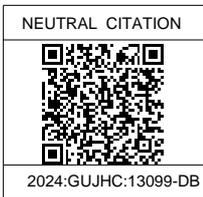


under the IBC by the Resolution Professional calling upon all concerned, including the statutory bodies, to raise claim, it would be expected from all the stakeholders to diligently raise their claim. The Income Tax authorities in that sense, ought to have been diligent to verify the previous years' assessment of the Corporate Debtor as permissible under the law and to raise the claim in the prescribed form within time before the Resolution Professional. In the present case, the Income Tax Authorities failed to do so and therefore, the claim stood extinguished.

22. As stated earlier, there could be a contingency where statutory claim is raised after the approval of the Resolution Plan, owing to receipt of information of the Corporate Debtor having suppressed certain facts while filing returns of the previous years,



which then could not be a part of the Resolution Plan. To counter such a situation, the statutory authorities will have to explore the possibility of raising such claims before the Resolution Professional or Adjudicating Authority, as the case may be, by requesting to make certain provisions for payment of statutory claims in the Resolution Plan. Whether to accept such claim is a matter that should be left to the COC, the Resolution Professional or the Adjudicating Authority. However, in absence of any such claim having been made and dealt with by the Resolution Professional and in absence of any provision to settle such claim in the Resolution Plan, such claim could not be raised subsequently. In that sense, the Petitioner is correct in contending that the impugned notice could not have been issued by the Assessing Officer.



23. The Income Tax Authority or the Legislature may also explore possibility to make necessary provisions to overcome such situation by lending circular under Rules or by way of an Amendment in the Income Tax Act, 1961, in line with the section 44(6) of the Maharashtra Value Added Tax, Act, 2002, which provides as under;

"44. Special provision regarding liability to pay tax in certain cases:

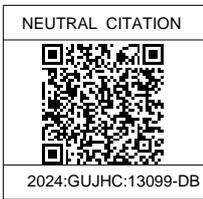
(6) Subject to the provisions of the Companies Act, 2013, where any tax or other amount recoverable under this Act from a private company, whether existing or wound up or under liquidation, for any period, cannot be recovered, for any reason whatsoever, then, every person who was a director of the private company during such period shall be



jointly and severally liable for the payment of such tax or other amount unless, he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the said company." We did not come across any such provision under the Income Tax Act, 1961 nor did the parties before us informed of its existence.

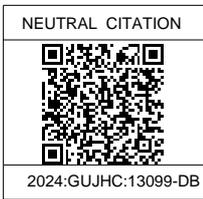
24. We, accordingly, record our answer in the negative to the question framed."

8.5 Referring to the decision of M/s. Ultratech Nathdwara Cement Ltd(supra) it was submitted that the facts of the said case are identical to the facts of the present case as in the said case also, the demand notices, issued after the date of order of NCLT approving the resolution



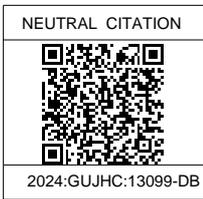
plan, have been quashed and set aside. It was submitted that the demand notice dated 18.07.2019 was received for tax dues for the Financial Year 2016-17 and thereafter on 22.01.2021, assessment order was passed whereby the respondent No.5 confirmed the demand of interest in lieu of delayed payment of GVAT and CST for the period of 01.04.2016 to 01.11.2016 which was after the date of the order passed by the NCLT on 20.11.2018 and the NCLAT order dated 14.11.2018.

8.6 It was therefore submitted that in the facts of the present case also when the assessment order for A.Y. 2018-19 was passed on 13.03.2023 after 01.07.2022, the decision of this Court would squarely be applicable as in the case of the Ultratech Nathdhwara Cement Ltd (supra) after



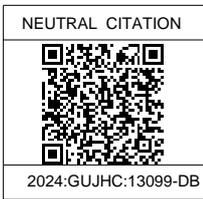
relying upon the decision of the Apex Court in case of Ghanshyam Mishra & Sons (P) Ltd (supra) this Court has quashed and set aside the assessment orders, assessment notices and demand notices dated 14.02.2019, 16.02.2019, 18.07.2020, 20.07.2020 and order dated 22.01.2021 by allowing the petition.

8.7 Learned advocate Mr. Shah also referred to and relied upon the decision of Delhi High Court in case of Tata Steel Limited (supra) to submit that in the facts of the said case the notice dated 20.08.2018 called upon the petitioner to deposit the tax against demand for assessment years 2001 to 2009-10, 2010-11 and 2013-14 pertaining to the assessment order passed on 30.12.2016 whereas, the NCLT admitted the application under the



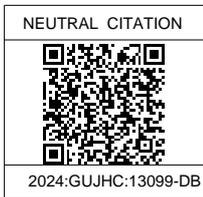
IBC on 27.07.2017 and thereafter, the claims were lodged before the RP by the Income Tax Department for the assessment years 2009-10 and 2013-14 and no claim was lodged for the Assessment Year 2001-2002 and in such circumstances, the Delhi High Court quashed and set aside the notices of demand and order dated 28.08.2017 and 17.10.2017 as unsustainable in law relying upon the decision of the Ghanshyam Mishra & Sons (P) Ltd (supra) of the Apex Court.

9. On the other hand, learned advocate Mr. Karan Sanghani appearing for the respondents submitted that the resolution plan approved by the NCLT on 01.07.2022 would extinguish all the liabilities for which no claim was made by the respondents before the RP as per the decision of the



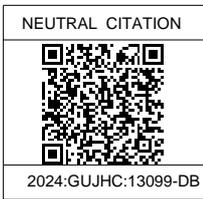
Apex Court in case of Ghanshyam Mishra & Sons (P) Ltd (supra), however, the assessment order for 2018-19 was passed on 13.03.2023 which is after the date of approval of the resolution plan by the NCLT on 01.07.2022 and therefore, there was no demand in existence or claim to be made by the respondents before the RP for the Assessment Year 2018-19. It was submitted that the proceedings which were pending during the period when the CIRP was in process is taken care of by Clause (e) of the order passed by the NLCT as well as Clause 13.2 of the resolution plan. The Clause 13.2 of the resolution plan reads as under:

"13.2 Any breach of the terms of this Resolution plan or default in the performance of the



obligations hereunder by any of the foregoing persons or any inaccuracy or inadequacy in the information contained in the IM shall cause irreparable damage to the RA and its proposal to revive the CD. Accordingly, in case of such breach of default or inaccuracy, the RA shall have the right to such remedies as may be available under applicable law (in addition to specific performance and/or filing an application with the AA in accordance with IBC)".

9.1 It was also pointed out that as per the clause (e) of the order, as regard to relief prayed under the provisions of the Income Tax Act, the Corporate Debtor or Resolution Applicant is required to approach the Income Tax Authorities who shall take a decision on relief and



concession sought by the Resolution Applicant in accordance with the provisions of the Act, 1961. It was however, submitted that the demand raised by the order dated 13.03.2023 for the Assessment Year 2018-19 was not crystallized or made available to lodge a claim before the RP during the resolution process and as no demand was in existence with regard to Assessment Year 2018-19, the decisions relied upon by the petitioner would not be applicable to the facts of the case.

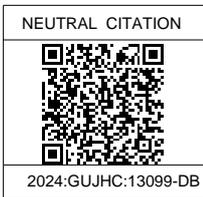
10. Having heard learned advocates for the respective parties and having considered the facts of the case, the issue raised in this petition and question which is posed for consideration to the effect as to



whether the demand raised pursuant to the assessment order 13.03.2023 passed after the resolution plan approved by the NCLT on 1st July, 2022 would extinguish or not, it would be germane to refer to the various provisions of the IBC which reads as under:

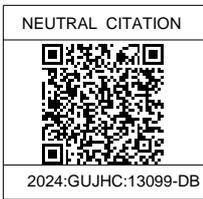
“Section 7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.



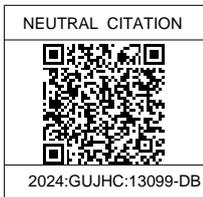
[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:



Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.



(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

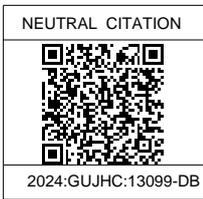
(3) The financial creditor shall, along with the application furnish--

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or



on the basis of other evidence furnished by the financial creditor under sub-section (3).

[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]

(5) Where the Adjudicating Authority is satisfied that--

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it



may, by order, reject such application:

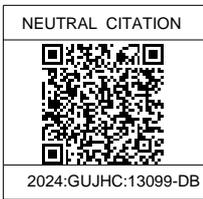
Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate--

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

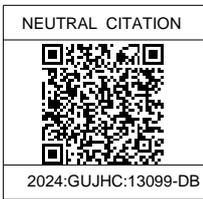
(b) the order under clause (b) of sub-section (5) to the financial creditor,



within seven days of admission or rejection of such application, as the case may be.

Section 31. Approval of resolution plan.

(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



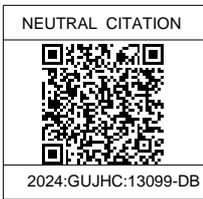
are owed,] guarantors and other stakeholders involved in the resolution plan.

[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.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),--

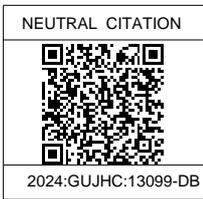
(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and



(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the

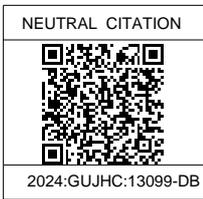


approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

Section 238 Provisions of this Code to override other laws.

provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

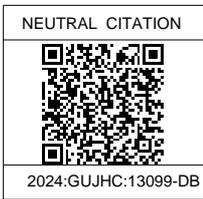
11. The Hon'ble Apex Court in case of *Ghanshyam Mishra & Sons (P) Ltd* (supra) has held that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of section 31 of IBC, the claims as provided in the



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 stake holders. On the date of approval of the resolution plan by the adjudicating authority all such claims which are not part of the resolution plan shall stand extinguished and no person is entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan.

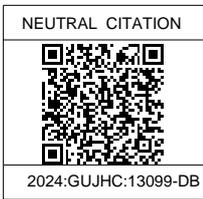
12. The above observations are contained in para 102 of the date which reads as under:

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



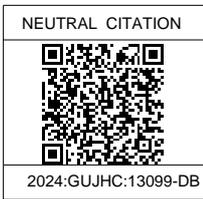
102.1 That once a resolution plan is duly approved by the adjudicating authority under sub section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any 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 of 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.

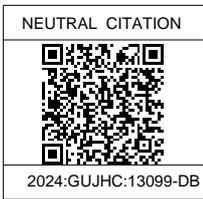


102.3 Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants if approval under section 31 could be continued."

13. In view of the above conclusion arrived at by the Apex Court after considering the entire Scheme of the IBC, the demand which was raised pursuant to the order dated 13.03.2023 by issuing the demand notice dated 20.03.2023 cannot be said to be in respect to a claim which is part of the resolution plan. The proceedings which were continued under section 147 read with section 144 of the Income Tax Act, 1961



by the respondent, was also not a proceeding in respect to a claim which is not part of the resolution plan. In such circumstances, the notices issued by the CIT (A) and reference for the hearing of the appeals filed by the petitioner challenging the assessment order would extinguish on 01.07.2022 as no demand would remain in existence in absence of any claim raised before the RP by the respondent authority. However, so far as the framing of the reassessment pertaining to the Assessment Year 2018-19 in absence of any demand pending as on 01.07.2022 and as such demand raised subsequently would not be a part of the claim to be made before the RP. As no demand to be claimed was in existence when the NLCT passed the order on 01.07.2022 and therefore, the



demand which has arisen pursuant to the assessment order dated 13.03.2022 cannot be said to have been extinguished. Therefore, so far as notices issued by the CIT (Appeals) are accordingly quashed and set aside. However so far as the prayer (CC) is concerned, the same is rejected and the petition stands dismissed so far as said prayer is concerned. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

JYOTI V. JANI