



W.P.No.27692 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.02.2026
Pronounced on	16.03.2026

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THE HONOURABLE MR. JUSTICE C.SARAVANANW.P.No.27692 of 2023andW.M.P.Nos.27168 and 27170 of 2023

P DOT G Constructions Private Limited,
 Represented by its Authorized Signatory
 An incorporated company having its Registered
 Office at Ground Floor, No.66, 3rd Main Road,
 Kasturba Nagar, Chennai – 600 020

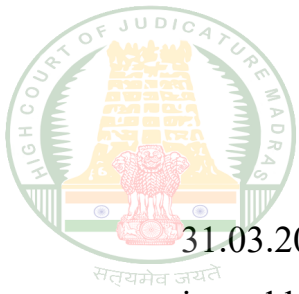
... Petitioner

Vs.

Assistant Commissioner of Income Tax,
 Income Tax Department,
 Ministry of Finance,
 Government of India,
 Main Building No.121,
 Mahatma Gandhi Road,
 Nungambakkam, Chennai,
 Tamil Nadu – 600 034.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for
 issuance of a Writ of Certiorarified Mandamus, to call for the records of
 impugned orders ITBA/AST/F/148A/2021-22/1042257427(1) dated



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31.03.2022 and ITBA/AST/S/147/2022-23/1051776721(1) dated 31.03.2023

issued by the Respondent and quash the same as being arbitrary, illegal, void and untenable, and direct the Respondent to not take any action towards

a. reassessment of the petitioner under Section 148A(d) of the IT Act for AY 2018-19 and all consequential actions / proceedings.

b. reassessment under Section 147 read with Section 144 and all consequential actions/proceedings.

(Prayer amended as per order dated 18.01.2024 in W.M.P.No.31170 of 2023 in W.P.No.27692 of 2023)

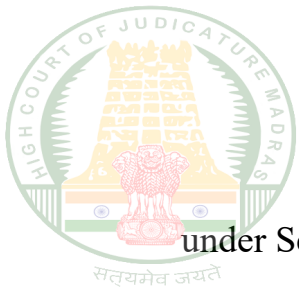
For Petitioner : Mr.R.Parthasarathy
For Mr.Adarsh Ramanujan

For Respondent : Mr.B.Ramanakumar
Senior Standing Counsel and
Mr.Avinash Krishnan Ravi
Junior Standing Counsel

ORDER

An important question of law has come up for consideration in this writ petition.

2. In this writ petition, the petitioner has challenged the impugned Order dated 31.03.2022 passed under Section 148A(d) of the Income Tax Act, 1961 and the impugned Assessment Order dated 31.03.2023 passed



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under Section 147 read with Section 144 of the Income Tax Act, 1961.

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3. By the impugned Order dated 31.03.2022, the respondent had justified the issuance of the Section 148 Notice dated 31.03.2022 for the Assessment Year 2018-2019.

4. By the second mentioned Assessment Order dated 31.03.2023, the petitioner's income was determined at Rs.9,00,85,178/- along with interest, and a proposal was made to impose penalties under Sections 272A(1)(d), 271AAC(1), 270A and 271B of the Income Tax Act, 1961.

5. The learned Counsel for the Petitioner places reliance of the judgment of the Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Sathish Kumar Gupta and others**, (2020) 8 SCC 531, wherein it has been held that a successful resolution applicant cannot be confronted with undecided or belated claims after approval of the resolution plan, as the same would create uncertainty in respect of the liabilities to be borne by such applicant. This principle has been reiterated and affirmed in **Ghanashyam Mishra and Sons Private Limited, Through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company**



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Limited, Through the Director and others, (2021) 9 SCC 657. It is

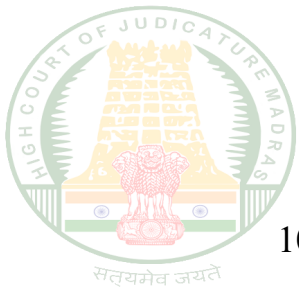
WEB COPY therefore submitted that the issue is no longer res integra.

6. It is submitted that any claim pertaining to a period prior to the approval of the resolution plan stands extinguished by operation of law and that this principle applies equally to tax demands and proceedings.

7. It is submitted that a consistent line of judicial precedents including those relating to income tax demands, have upheld this position, holding that a successful resolution applicant cannot be settled with tax liability.

8. It is submitted that the challenges to such decisions have also been dismissed by the Hon'ble Supreme Court.

9. The learned Counsel further submitted that the resolution plan in the present case was submitted on 26.05.2019 and subsequently approved by the National Company Law Tribunal (NCLT) on 13.12.2019. While approving the Resolution Plan, the NCLT, in paragraph 27.6, observed that the Resolution Applicant may approach the appropriate forum or authority for seeking reliefs and concessions in accordance with law.



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10. It is submitted that the aforesaid observation must be construed in the context of the legal position prevailing as on the date of approval. Subsequently, the Hon'ble Supreme Court, in ***Essar Steel*** (referred to *supra*) and **Ghanashyam Mishra** (referred to *supra*), has conclusively held that no proceedings can be initiated or continued in respect of claims pertaining to a period prior to the approval of the Resolution Plan. In view of the said authoritative pronouncements, the requirement of approaching any authority for such reliefs no longer survives and must be read accordingly.

11. In response to the query of this Hon'ble Court as to whether the Respondent would refrain from enforcing the demand against the Petitioner and instead proceed against the erstwhile promoters, it is submitted that the order of this Hon'ble Court may specifically record that such demands arising out of the impugned orders not be enforced against the Petitioner. It is further prayed that it be clarified that the impugned orders are not being set aside merely to enable the Department to initiate proceedings under Section 179 of the Income Tax Act, 1961.

12. The learned Counsel for the Petitioner placed reliance on the following judgments:-



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- (i) ***Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta and others;*** (2020) 8 SCC 531;
- (ii) ***Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd;***(2021) 9 SCC 657;
- (iii) ***Vaibhav Goel Vs. Commissioner of Income Tax;*** (2025) 8 SCC 511;
- (iv) ***Ruchi Soya Industries Ltd. and Others Vs. Union of India and Others;***(2022) 6 SCC 343;
- (v) ***Alok Industries Vs. Commissioner of Income Tax;***2024 SCC Online Bom 3481;
- (vi) ***AMNS Khopoli Ltd. Vs. Assistant Commissioner of Income Tax (International Taxation);*** 2024 SCC Online Bom 1213;

13. The learned Government Advocate for the Respondent contended that the Resolution Plan having been submitted prior to the judgments in **Essar Steel** (referred to supra) and **Ghanashyam Mishra** (referred to supra), the same must be interpreted independent of the said judgments.

14. It is submitted that the interpretation of the statutory provisions by the Hon'ble Supreme Court is deemed to be the law from the inception of the statute. Therefore, the applicability of the said judgments is not dependent on whether they were rendered prior to or subsequent to the approval of the Resolution Plan.

15. It is further submitted that, at the time when the issue arose as to



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the permissibility of raising demands for Assessment Year 2018–19, the law as settled by the Hon'ble Supreme Court was required to be applied, irrespective of the date of approval of the resolution plan.

16. The Respondent has further contended that since the Department has not acceded to the waiver of dues for Assessment Year 2018–19, the condition precedent contained in paragraph 3.2(a) of the resolution plan remains unsatisfied.

17. The learned Government Advocate for the Respondent submitted that the Petitioner admittedly failed to file its Return of Income for Assessment Year 2018–19. Such failure, in itself, constitutes sufficient ground for the Assessing Officer to form a belief that income chargeable to tax has escaped assessment, thereby conferring valid jurisdiction to initiate reassessment proceedings.

18. It is submitted that a show cause notice under Section 148A(b) of the Income Tax Act was duly issued and a reply was submitted by the Petitioner which was considered and a reasoned order under Section 148A(d) was passed recording satisfaction for initiating proceedings for reassessment.



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There is no violation of principles of natural justice or any procedural infirmity warranting interference.

19. It is further submitted that the Assessing Officer was in possession of tangible “information” within the meaning of **Explanation 1 to Section 148** of the Income Tax Act, 1961 indicating income having escaped.

20. The learned Government Advocate submitted that the initiation of Corporate Insolvency Resolution Process (CIRP) on 13.07.2018 did not either absolve the Corporate Debtor or the Resolution Professional to comply with the statutory obligation to file the Return of Income in time, particularly when the due date for filing such return arose subsequent to the commencement of CIRP.

21. The Moratorium under Section 14 of the Insolvency and Bankruptcy Code did not operate as a bar to comply with the statutory obligations of filing Return.

22. It is submitted that the Resolution Plan, being in the nature of a commercial arrangement, specifically sought waiver/extinguishment of



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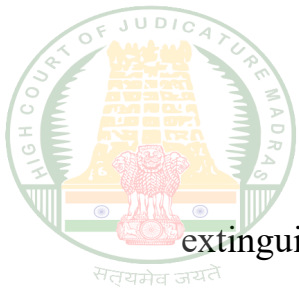
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certain tax liabilities under the “Reliefs and Concessions” clauses. However, the Hon’ble National Company Law Tribunal, by its order dated 13.12.2019, expressly declined to grant such reliefs on the ground that it lacked jurisdiction to grant waiver from statutory tax dues. Consequently, such liabilities which did not form part of the approved “clean slate” cannot be questioned as they were never intended to be extinguished.

23. It is therefore submitted that the Petitioner cannot claim any benefit beyond what has been expressly approved in the Resolution Plan, and the relevant clauses must be read subject to the explicit rejection of tax waivers by the NCLT.

24. It is further submitted that the Resolution Plan was submitted on 26.05.2019, prior to the judgments of the Hon’ble Supreme Court in ***Essar Steel*** (referred to *supra*) and ***Ghanashyam Mishra*** (referred to *supra*).

25. It is submitted that the commercial bargain entered into by the Resolution Applicant in the Revised Resolution Plan must be interpreted in light of the legal position prevailing at that time and specifically what was claimed and what was sanctioned and cannot be retrospectively expanded to



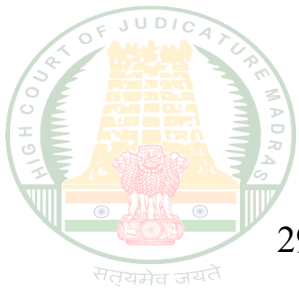
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extinguish statutory liabilities, particularly when specific relief in that regard was denied.

26. The learned Government Advocate further relied on Clause 7.13 of the approved Resolution Plan, which records an undertaking by the Resolution Applicant to file pending income tax returns and to seek statutory reliefs in accordance with law.

27. Similarly, it is submitted that Clause 5.7 records that the financial statements for relevant years would be audited and tax liabilities determined for the purpose of filing returns. These clauses clearly demonstrate that the Resolution Applicant was conscious of pending tax compliances and had undertaken to regularise them in accordance with law.

28. It is submitted that, having undertaken to comply with statutory requirements, the Petitioner cannot now contend that the tax liability for Assessment Year 2018–19 stands extinguished. The Resolution Plan itself contemplates continuation of statutory compliance and processes, and cannot be selectively relied upon to claim extinguishment of liabilities while simultaneously availing its benefits.



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29. It is further submitted that the Resolution Applicant, having implemented the Resolution Plan despite the explicit rejection of tax waivers by the NCLT, must be deemed to have accepted the Plan in its entirety, including its limitations. Such conduct amounts to waiver of any claim for extinguishment of tax liabilities not granted under the Plan.

30. The learned Government Advocate submitted that the Resolution Applicant was fully aware of potential tax liabilities. The Information Memorandum and data room disclosures reflected non-filing of returns and contained financial data for the relevant period. Having conducted due diligence, the Resolution Applicant is deemed to have factored such risks into its commercial bid and cannot now claim immunity.

31. The learned Government Advocate placed reliance on the following judgments:-

- (i) ***Adani Power Limited v. Shapoorji Pallonji and Co. Pvt. Ltd. & Ors.***; [2025]256CompCas346;
- (ii) ***Fourth Dimension Solutions Ltd. v. Ricoh India Ltd. & Ors.***; CIVIL APPEAL NO. 5908 OF 2021;
- (iii) ***The National Sewing Thread Co. Ltd. v. The Superintending Engineer, TANGEDCO***; (2024 (3) CTC 690);



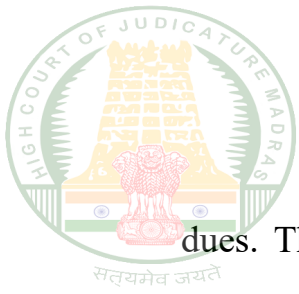
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WEB COPY 32. It is submitted that the aforesaid decisions in Adani Power Limited and Fourth Dimension Solutions Ltd. Fourth Dimension Solutions Ltd. Fourth Dimension Solutions Ltd.,(referred to supra)recognise the Hon'ble Supreme Court clearly recognize a clear distinction between (i) adjudication and quantification of a liability, and (ii) its enforceability against a successful resolution applicant post approval of the Resolution Plan.

33. It is submitted that, in the present case, reassessment proceedings under Sections 147 and 148A are confined to adjudication and quantification of tax liability for the Assessment Year 2018-2019 as no return was filed for Assessment Year 2018–19.

34. It is submitted at best, the liability existed as a contingent statutory liability at the time of CIRP which the Department is entitled to determine in accordance with law.

35. The learned Government Advocate further submitted that the Information Memorandum is a foundational disclosure document and must contain all known or reasonably ascertainable liabilities, including statutory



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dues. The “clean slate” doctrine can operate only when such liabilities are duly disclosed and addressed in the Resolution Plan.

36. In the present case, the liability to tax had already arisen by operation of law, and non-filing of return merely rendered it unquantified. The existence of such liability was neither unknown nor incapable of identification. Therefore, it cannot be contended that such liability stood extinguished.

37. It is submitted that failure to include such statutory dues in the Resolution Plan does not bind the Department nor extinguish the liability. The obligation to disclose such dues rested upon the Corporate Debtor and its management under Section 19 of the Insolvency and Bankruptcy Code, and any omission in this regard cannot operate to the prejudice of the Revenue.

38. The learned Government Advocate further submitted that the statutory liability under Section 140A of the Income Tax Act arose during the CIRP period, as the due date for filing return was 31.10.2018. Such liability forms part of Insolvency Resolution Process Costs under Section 5(13) of the Code and is required to be paid in priority under Section 30(2)(a). Failure to



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provide for such liability in the Resolution Plan cannot result in its extinguishment.

39. Without prejudice, it is submitted that Section 179(1) of the Income Tax Act, 1961 provides for recovery of tax dues from directors of a private company where such dues cannot be recovered from the company. This provision ensures that statutory dues are not defeated by corporate insolvency and enables the Department to proceed against persons responsible for the affairs of the company.

40. In view of the above, it is submitted that the reassessment proceedings for Assessment Year 2018–19 are lawful, within jurisdiction, and do not violate the Resolution Plan or the provisions of the Insolvency and Bankruptcy Code.

41. Per contra, the learned Counsel for the Petitioner submitted that such a contention is untenable in law. The law declared by the Hon'ble Supreme Court is declaratory in nature and operates retrospectively.

42. In response, it is submitted that the said condition precedent,



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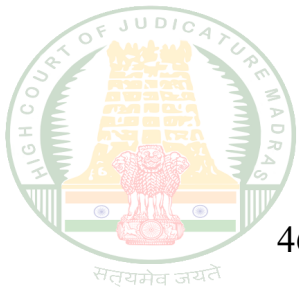
insofar as it relates to claims for a period prior to the approval of the resolution plan, stands subsumed and validated by the settled position of law.

In effect, such condition is no longer contingent upon acceptance by the Respondent, but stands sanctioned by operation of law and, therefore, does not require any independent approval from the Department.

43. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent.

44. The dispute in the present case pertains to **Assessment Year 2018-19** for the relevant **Previous Year 2017- 18** *i.e.*, the income tax liability for the income earned by the petitioner company between **1.4.2017** and **31.3.2018** assessable during aforesaid **Assessment Year 2018-19**.

45. The last date for filing the Return of Income expired on **31.10.2018** under Section 139(1) of the Income Tax Act, 1961, and on **31.12.2018**, under Section 139(4) of the said Act. The Corporate Insolvency Resolution Proceedings (CIRP), against the petitioner company was initiated during the **Financial Year 2017- 18** on **13.07.2018**.



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46. In **Committee of Creditors of Essar Steel India Limited Vs.**

Sathish Kumar Gupta and others, (2020) 8 SCC 531, the Hon'ble Supreme

Court had earlier held as under:-

105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In SBI v. V. Ramakrishnan [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , this Court relying upon Section 31 of the Code has held: (SCC p. 411, para 25)

“25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact,



Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.”

106. Following this judgment in V. Ramakrishnan case [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , it is difficult to accept Shri Rohatgi's argument that that part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile Directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, NCLAT judgment being contrary to Section 31(1) of the Code and this Court's judgment in V. Ramakrishnan case [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , is set aside.

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



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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.

47. In *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657, the Hon'ble Supreme Court merely held as under:-

93. *As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members,*



creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

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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.*



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103. *In the light of what has been held by us hereinabove, we now proceed to decide individual matters.*

48. The Supreme Court in *STO Vs. Rainbow Papers Ltd.*, (2023) 9 SCC 545, while dealing with recovery of taxes not provided in Resolution Plan in respect of VAT dues arising under Gujarat Value Added Tax Act, more particularly under Section 48 of the GVAT Act held as under:

- a. State is a “secured creditor” with the meaning of Section 3(30) of the Code.
- b. Resolution Plan should provide for payment of such statutory dues, failure to provide may fall foul of sub-section (2) to Section 30 of the Code.
- c. A Resolution Plan not in compliance with Section 30 would not be binding on the Government.
- d. CoC which might include financial creditors cannot secure their dues against Statutory dues.
- e. Statutory First Charge under GVAT Act is not in conflict with the provisions of IBC.

49. The following portions of the said judgment makes it clear:

"45. As rightly argued by the learned Solicitor General, there can be no question of acceptance of a resolution plan that is not in conformity with the statutory provisions of Section 31(2) IBC. Section 30(2) (b) IBC casts an obligation on the resolution professional to examine each resolution plan received by him and to confirm that such resolution plan provides for the payment of dues of operational creditors, as specified by the Board, which shall not be



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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 operational creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (2) of Section 53, whichever was higher, and provided for the payment of debts of financial creditors, who did not vote in favour of the resolution plan, in such manner as might be specified by the Board.

46. Under Section 31 IBC, a resolution plan as approved by the Committee of Creditors under sub-section (4) of Section 30 might be approved by the adjudicating authority only if the adjudicating authority is satisfied that the resolution plan as approved by the Committee of Creditors meets the requirements as referred to in sub-section (2) of Section 30 IBC. The condition precedent for approval of a resolution plan is that the resolution plan should meet the requirements of sub-section (2) of Section 30 IBC.

48. A resolution plan which does not meet the requirements of sub-section (2) of Section 30 IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a corporate debtor.

49. Section 31(1) IBC which empowers the adjudicating authority to approve a resolution plan uses the expression “it shall by order approve the resolution plan which shall be binding...” subject to the condition that the resolution plan meets the requirements of sub-section (2) of Section 30. If a resolution plan meets the requirements, the



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adjudicating authority is mandatorily required to approve the resolution plan. On the other hand, sub-section (2) of Section 31, which enables the adjudicating authority to reject a resolution plan which does not conform to the requirements referred to in sub-section (1) of Section 31, uses the expression “may”.

52. If the resolution plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the adjudicating authority is bound to reject the resolution plan.

53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 IBC.

54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.

56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) IBC defines



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“secured creditor” to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of “secured creditor” in IBC does not exclude any Government or Governmental Authority.

58. We are constrained to hold that the appellate authority (Nclat) and the adjudicating authority erred in law in rejecting the application/appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim."

50. This departure was noted by a subsequent judgment in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat (p) Ltd., (2023)10 SCC 60***. However, Court is not concerned with the same. There the Court held that During the insolvency resolution process, a secured creditor is not permitted to realise its dues by initiating any proceeding.

51. It held that this is by virtue of Section 14(1)(c) which enables the imposition of a moratorium period, during which a secured creditor is precluded from bringing any action to foreclose, recover or enforce any security interest. Secured creditors' rights are restored only in the event of failure of the insolvency resolution process, at the stage of liquidation.

52. However, it is to be emphasized that a judgment is a precedent for



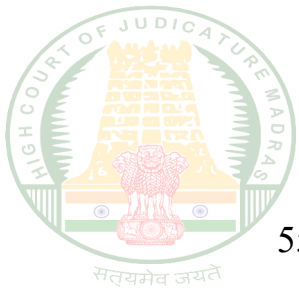
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what it decides, and not what may follow from it. In this regard, reference is made to the following judgments:

- i. **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.**, reported in (2003) 2 SCC 111:
- ii. **Mehboob Dawood Shaikh v. State of Maharashtra**, (2004) 2 SCC 362
- iii. **Khaja Industries v. State of Maharashtra**, 2007 SCC OnLine Bom 579
- iv. **MCD v. Gurnam Kaur**, (1989) 1 SCC 10

53. As far as the present case is concerned, no Returns of Income were filed for the **Assessment Year 2016-2017** and **Assessment Year 2017-2018** as also for the subject **Assessment Year** namely **Assessment Year 2018 – 2019** [for the income earned during the relevant **Previous Year 2017 – 2018**] when the Corporate Insolvency Resolution Proceeding was initiated.

54. As mentioned above, the Corporate Insolvency Resolution Proceedings (CIRP) was earlier initiated against the petitioner company before the NCLT on **13.07.2018** by an Operating Creditors wherein Mr. T. V. Subramanian was initially appointed as an **Interim Resolution Professional (IRP)**. Mr. T. V. Subramanian was subsequently replaced on **19.07.2018** with one **Mr. Premachandran** under the provisions of IBC 2016.



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55. During the interregnum, as mentioned above, the last date for filing of the Return of Income for the **Assessment Year 2018-2019 (Previous Year 2017-2018)** i.e. for the income earned during Year ended on **31.03.2018**) expired on **31.10.2018** and on **31.12.2018** respectively under Section 139(1) as well as 139(4) of the Income Tax Act, 1961.

56. The said Interim Resolution Professional merely invited claims between **24.07.2018** and **02.08.2018** from the Creditors of the petitioner.

57. On **18.08.2018**, the Committee of Creditors was constituted pursuant to which the first meeting of the Committee of Creditors was held on **23.08.2018**. On **20.09.2018**, **Mr. Sundaresan Nagarajan** was appointed as a **Resolution Professional (RP)**.

58. On **17.04.2019**, the said Resolution Professional invited Expressions of Interest (EOI). On **28.04.2019**, a final list of Resolution Applicants was prepared by the said Resolution Professional.

59. Between **29.04.2019** and **15.05.2019**, applications were invited for the Corporate Insolvency Resolution Process. On **26.05.2019**, a Revised



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Resolution Plan was submitted by RCC E-Construct Pvt. Ltd.

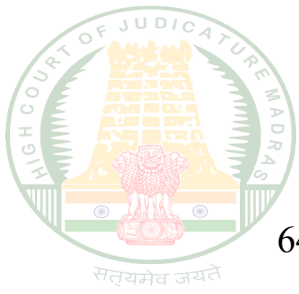
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60. Between **29.05.2019** and **30.05.2019**, the Committee of Creditors cast their votes and finally approved the Revised Resolution Plan dated 26.05.2019 of RCC E-Construct Pvt. Ltd on 30.05.2019.

61. Meanwhile, the Resolution Plan submitted by M/s. RCC e-Construct Private Limited on 26.05.2019 was approved by the Committee of Creditors (COC).

62. The said Resolution Professional thereafter moved an application for approval of the Resolution Plan submitted by the said Resolution Applicant.

63. Thus, the above Resolution Plan was eventually approved by the NCLT on **13.12.2019**. On the date of the Revised Resolution Plan (i.e**26.05.2019**), the Hon'ble Supreme Court had not yet declared the law in ***Essar Steel*** (referred to *supra*), as the said decision of the Hon'ble Supreme Court was pronounced by the Hon'ble Supreme Court only on **15.11.2019**.



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64. In the Information Memorandum filed by the Resolution Professional content of which has been captured in above Resolution Plan and in Order dated 13.12.2019 of the NCLT, the Resolution Professional stated as under:

“10. UNAUDITED PROVISIONAL FINANCIAL STATEMENTS FOR FY 2016-17, FY 2017-18 AND FOR THE PERIOD FROM 1ST APRIL 2018 TO 13TH JULY 2018

The Audit of accounts for the financial year ended on 31st March 2017 and 31st March 2018 is not completed.

However, Unaudited Provisional Results for the Financial Year ended on 31st March 2017 and 31st March 2018 and for the period from 1st April 2018 to 13th July 2018 along with corresponding tally are available in the e-storage virtual data room.”

65. In para 4.6 of the Revised Resolution Plan dated 26.05.2019, the statutory dues of the petitioner company were quantified as under:

(i) Income Tax

Sr.no.	Assessment Year	Raised u/s	Status	Tax (INR in Lakh)
1	2009-10	143(1)	Not paid	1.89
2	2013-14	143(3)	Not paid	11.17
3	2014-15	154	Appeal Preferred	137.04
4	2015-16	143(3)	Not paid	13.42
		Total		163.52



WEB C (ii) Other Statutory Dues

Sr.no.	Particulars	Period	Amount (INR in Lakh)	Present Status
1	PF	FY 2015-16	8.36	Under Discussion
2	ESI	FY 2015-16	6.17	Under Discussion
3	Sales Tax		89.05	Obtained stay order from Chennai High Court
4	Sales Tax		9.06	Appeal over set aside and remanded by the Court
5	VAT	FY 2007-08 to 2015-16		Inspection made by the Enforcement Department and Notice has been issued.
6	TDS & TCS	Various years	13.43	Orders Received
7	Service Tax	FY 2013-14 to 2015-16	2062.50	Notice issued by the Dept
		Total	2,188.57	

66. In Clause 3 to Para 4.6 of the aforesaid Revised Resolution Plan, it was stated as under:

“(iii) Most of the abovementioned statutory dues are under assessment or at various stages of litigation. Therefore, the final amount payable in respect thereof is to be ascertained by respective authorities/statutory bodies.”

67. In respect of the payment of the aforesaid amount, it was quantified in the above Revised Resolution Plan as under:

“(iv) Even though no claims have been filed by the statutory authorities, since these have been disclosed by the Resolution Professional in the Information



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Memorandum, the Resolution Plan provides for payment of 1.50% of the final amount as and when determined by requisite authority. The settled dues shall be paid on actual demand and such demand shall not accrue any interest or penalties for non-payment.

(v) However, the same shall be paid after payment of operational creditors and financial creditors from the balance surplus available after payment of minimum amounts provided for payment of financial creditors and operational creditors.

(vi) As per the electronic ledger of GST shared by the Resolution Professional, Rs 45,86,838/-is available as credit with the Corporate Debtor. The same shall be utilized and adjusted towards the payment of 1.50% of the final amount payable for the service tax and only amount of this credit shall be paid to the regulatory authority.”

68. In Chapter 5, para 5.7 of the above Revised Resolution Plan dated 26.05.2019, it was stated as under.

*“(ii) The auditor Mr. R. P. Madhu shall audit the financials for FY 2016-17 and FY 2017-18 as well as work out tax liabilities by 15th July 2019. The said financials shall be signed by erstwhile promoters/directors of the Company, **who shall assume liability and responsibility for such financials and for filing of all such financials with the relevant authorities.** In the event such filings are required to be done by any Nominee Director to comply with any statutory requirement, **it shall be***



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deemed that such Nominee Director and the Company shall be safeguarded and held immune from any claims and liabilities recognized or provided in such financials, which are not disclosed, dealt with or accepted in this Resolution Plan.

(iii) The Resolution Professional, erstwhile promoters and erstwhile auditors of the Company shall provide any information (including any original agreement/contract/document available with the ex-promoter or ex-auditor) available with them in respect of or related to the Company, as is required by the Company or the Resolution Applicant and shall, at the cost and expense of the Company and provide all necessary cooperation and support for enabling the reconstituted Board to take over management of the Company.”

69. In this regard, in Paragraph 13 of the Information Memorandum, the Resolution Professional had stated, as follows insofar as Income Tax pending dues:-

“13. INCOME TAX

All matters with regard to the Income tax is handled by Mr. Madhu, Chartered Accountant, the auditor of the company. The Income Tax department has recently issued a demand notice for the pending dues, which is reproduced below:

Sl.No	Assessment Year	Raised u/s	Tax	Status
1	2008-09	220(2)	Rs.73/-	Not Paid



2	2009-10	143(1)	Rs.1,88,887/-	Not Paid
3	2013-14	143(3)	Rs.11,16,620/-	Not Paid
4	2014-15	154	Rs.1,37,04,250/-	Appeal Preferred
5	2015-16	143(3)	Rs.13,42,250/-	Not Paid

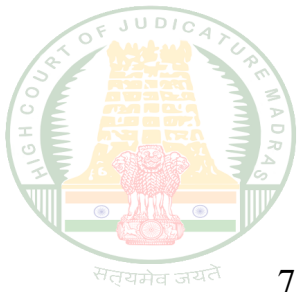
However, the IRP/RP has not received any claims from the Income tax department.

As the accounts of the company has not been finalised for the FY 2016-17 and FY 2017-18, the company has not filed its Income tax returns for the Assessment year 2017-18 and 2018-19. The Income Tax Department has issued notice dated 7th Feb 2019 to the company under section 142(1) of the Income tax Act, 1961 for the assessment year 2017-18.

Copy of the demand notice dated 7th February 2019 received from the Income tax department is available in the e-storage virtual data room.”

70. As far as the limitation of liabilities and effect of approval of the Resolution Plan, it was stated in Chapter 6 of the aforesaid Revised Resolution Plan as under:

*“6.1 The Company may have unsettled/unassessed statutory dues including direct and indirect tax dues. The said liabilities are deemed to be waived and the Resolution Applicant is hereby provided immunity in relation to the **same except to the extent provided for in this Resolution Plan**. Such immunity shall apply in relation to all non-compliances on part of the Company prior to the **Effective Date**.”*



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71. As far as the reliefs and concessions are concerned, in the said Revised Resolution Plan dated 26.05.2019, it was further stated as under:-

“7.4 Any and all dues, Taxes, liabilities or obligations payable to, claims, assessments, counter claims, demands, actions or penalties, fines, levies, cesses, additions or any other charges made or imposed by (including but not limited to all interests, damages, losses and expenses and all liabilities in relation to any consent, approval, license, certificate, privilege, entitlement, exemption or benefit granted to the Corporate Debtor or in relation to the Corporate Debtor, whether subsisting or not), any government authority (whether claimed or not claimed, disputed or undisputed, by authority or assessing officer, demanded or not), shall stand irrevocably waived, withdrawn, and permanently extinguished on the order of the Adjudicating Authority approving this Resolution Plan and going forward the Corporate Debtor/Resolution Applicant shall not be liable for the same in any manner.

7.6 Liability on all cases/legal proceedings related to VAT, Excise, Central Sales Tax, service tax, Income Tax before any Court, Assessing officer, Tribunal or Arbitrator shall stand irrevocably waived, withdrawn, and permanently extinguished on the date of Order of Adjudicating Authority approving the Resolution Plan without any further act or deed and the Corporate Debtor shall not be liable for the same in any manner or alternatively the respective authorities shall be under obligation to withdraw the relevant cases/legal proceedings.

7.13 The last income-tax return ('ITR') filed by the Corporate Debtor under the IT Act was in financial year ('FY') 2015-16. Thereafter, the Corporate Debtor has not filed its ITRs for FY 2016-17 and FY 2017-18. The



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erstwhile management of the Corporate Debtor missed the due date within which the tax returns for these years could be filed under the IT Act.

As per the provisions of section 139(3) of the IT Act, read with section 80 of the IT Act, in case a taxpayer incurs a loss in any year, inter-alia under the head "Profits and gains of business or profession", which can be carried forward for set-off in future years, the taxpayer ought to furnish the ITR for that year within the due date prescribed under the IT Act. To simplify, as per the provisions of the IT Act, tax losses cannot be carried forward for set-off in future years if no ITR/ belated ITR is filed by a taxpayer.

As per the above provisions, due to non-filing of tax returns by erstwhile management of the Corporate Debtor for FYs 2016-17 and 2017-18, the tax losses incurred by Corporate Debtor in those years have lapsed and are not available for set-off in future years. Given the current financial position of the Corporate Debtor, wherein the secured financial creditors and Home Buyers are bearing heavy financial haircuts and burden for completion and delivery of the Projects has been taken by the Resolution Applicant, it would provide some relief to Corporate Debtor if the tax losses pertaining to earlier years are permitted to be carried forward for set-off against future business income. We, therefore, request the Adjudicating Authority to provide that the Corporate Debtor should be relieved from the applicability of the provisions of section 139(3) of the IT Act, read with section 80 of the IT Act and the delay in filing be condoned (without any liability on the Corporate Debtor) for such filing thereby allowing the Corporate Debtor to make the filing at the end of 12 months of Effective Date as finalisation of accounts would have genuine hardship on the Resolution

Applicant to file such returns. Upon this relief being granted, such tax losses be eligible to be carried forward



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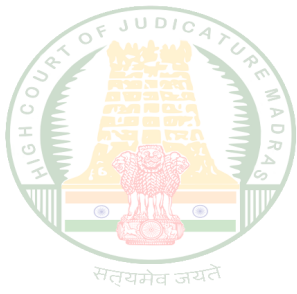
for set-off by Corporate Debtor against income of future years, in accordance with the provisions of the IT Act. The order should therefore, direct the jurisdictional income-tax officer of Corporate Debtor to accept the belated tax returns that Corporate Debtor shall file for all pending years and accept the claim for tax losses in each relevant year.

With respect to income tax return of FY 2018-19 which would be required to be filed immediately around the Effective Date of this Resolution Plan. Since the books of accounts are yet to be audited and handover of information for that financial year as well would be done after Effective Date, hence, the Adjudicating Authority to condone the possible delay and allow a time period of 12 months from Effective Date to make such filing along with carry forward of the losses for that financial year.”

72. The Chapter 3 of the Revised Resolution Plan pertaining to the Resolution Applicant and Resolution Plan. It was stated in Paragraph 3.2 of Chapter 3 as under:

“3. 2 Conditions Precedent

Notwithstanding anything contained in this Resolution Plan, performance of the obligations under the Resolution Plan is subject to the prior completion of the conditions set out immediately below, to the satisfaction of the Resolution Applicant. If the conditions set forth in this Clause 3.2 are not met to the satisfaction of the Resolution Applicant, this Plan shall not be effective or operative as against the Resolution Applicant and the Resolution Applicant shall have no obligations whatsoever under this Plan or otherwise to any Person,



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including having no obligation with respect to any performance security/corporate guarantee/demand draft or any other obligation and each such performance security/corporate guarantee/demand draft shall be promptly returned to the Resolution Applicant.

a. All the claims/demands/dues of income tax department pertaining to Financial Year 16-17, Financial Year 17-18 (which is prior to Insolvency Commencement Date) and Financial Year 18-19 shall stand extinguished or the Adjudicating Authority shall have waived all claims/ of income tax department including the Income Tax liabilities pertaining to Financial Year 16-17 Financial Year 17-18 (which is prior to Insolvency Commencement Date) and Financial Year 18-19 in light of the following reasons:

(i) Since, the Liquidation Value owed to the Operational Creditors is expected to be nil owing to very limited funds/assets being available for undertaking the construction and completion of projects and for payment of secured financial creditors and Home Buyers, who are bearing heavy financial haircuts and burden for completion and delivery of the Projects;

(ii) Since the erstwhile management of the Corporate Debtor failed to file the income tax returns for these years, and accordingly the income tax liability in the nature of claims (if any) could not have been filed with the Resolution Professional, however, had the income tax returns been filed, any income tax liability would have been treated as an Operational Debt in terms of the provisions of the Code and various judicial precedents such as Pr. Director General of Income Tax (Admn. & TPS) Vs. M/s. Synergies Dooray Automotive Ltd. & Ors. and State Bank of India Vs. MOR Farms Private Limited and accordingly in absence of any liquidation value due to the operational creditors, such claims would have been settled without any payment.



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(iii) Since, the Resolution Applicant may not be able to assess the income of the Corporate Debtor by the due date of filing the income tax returns for the Financial Year 2018-19, on account of non-availability of income tax returns of previous financial years and accordingly such income tax liability for the Financial Year 2018-19 to be treated as the operational debt in light of judgment *State Bank of India Vs. MOR Farms Private Limited*.

b. The Adjudicating Authority shall have condoned the delay in filing of income tax returns by the Corporate Debtor for previous years and shall have directed the jurisdictional income-tax officer of Corporate Debtor to accept the belated tax returns for the Financial Year 16-17, Financial Year 17-18 (which is prior to Insolvency Commencement Date) that Corporate Debtor (upon approval of the Resolution Plan) shall file for all pending years and accept the claim for tax losses in each relevant year.

c. As part of the Resolution Plan, it is proposed to enter into a joint development agreement and/or collaboration agreement and/or JV agreement with the Resolution Applicant. Further, it is also being proposed to assign certain liabilities (which may include liabilities towards Secured Financial Creditors) to the Resolution Applicant. These transactions may entail implications and liabilities, under tax laws including liability for MAT and there may be some consequences in the hands of the Corporate Debtor. Given the current financial position of the Corporate Debtor, levy of a tax liability upon these transactions will cause genuine hardship to the Corporate Debtor and will also further reduce the monies available for paying the creditors including the Home Buyers. Accordingly, we request you to direct the Income Tax Authorities to forego any tax liability that may arise under the Income Tax Act, 1961 ("**IT Act**") on account of assignment of liabilities to the Resolution Applicant or upon entering into joint development



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agreement and/or collaboration agreement and/or JV agreement with the Resolution Applicant.”

*The conditions stated hereinabove shall be referred to as the “**Condition Precedent**”.*

73. As far as the relief sought for in the Revised Resolution Plan is concerned, while sanctioning the same, the NCLT in its Order dated 13.12.2019 observed as under:

“13. Since this Adjudicating Authority is required to approve the Resolution Plan in terms of Section 30(6) of I&B Code, 2016, upon the focus in relation to the invitation for “EoI” and filing of the Resolution Plan by the Resolution Applicant, the following facts emerge:-

(i) In the Information Memorandum as circulated, it is evident that the Corporate Debtor viz., P Dot G Constructions Private Limited was Incorporated with the main object to be pursued by the Company inter alia includes to carry on the business of construction of flats, individual houses and that prior to initiation of CIR Process, the Corporate Debtor was successfully implementing the various projects.

(ii) The Application as filed of the Operational Creditor viz., IJM Concrete Products Pvt. Ltd, was admitted by this Authority on 13.07.2018 and on the date of initiation of the CIR Process the following were the Directors of the Corporate Debtor viz., 1) Mrs. Prabhakar Reddy Hamsini, ii) Mr. Pala Govinda Prabhakar Reddy, and iii) Mr. Sugumar. However, they were disqualified under Section 164 of the Companies Act, 2013. At the time of CIR Process, it is disclosed in the Information



Memorandum that the following were the ongoing projects of the Corporate Debtor:-

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Project	Location	Area (in square ft.)	Total No. of flats	Sold	Security Interest
Sunshine	Tiruvallur	2,21,697	260	110	150
Dreamz	Tiruvallur	88,066	144	122	22
Innova	Mangadu	2,39,790	236	183	53
Matrix	Potheri	2,90,932	324	163	161
Icon	Maraimalai Nagar	63,948	76	76	-
Total		9,04,433	1,040	654	386

(iii) The Information Memorandum discloses that the Promoters of the Corporate Debtor whose details are given above were not co-operating which prompted the IRP / Resolution Professional to file the Application under Section 19 of the I&B Code, 2016. It is also averred in Information Memorandum that one Mr. A. Arumugam was appointed as Authorised Representative (AR) to represent Class of Creditors Comprising Home Buyers vide Order dated 24.08.2018. The Information Memorandum also discloses that in view of the non-co-operative attitude of the persons in the management of the Corporate Debtor in making available of the records, an Advocate Commissioner viz., Mr. Dhanraj was appointed by this Authority vide its Order dated 11.09.2018 and that the said Advocate Commissioner took over the available records and also filed the report before this Tribunal.

(iv) The Information Memorandum as circulated to the prospective Resolution Applicants also brings forth the fact that the Company owes by way of tax duties to the Income Tax Department as well as GST, VAT, Service Tax and other statutory dues details of which have also been given in the Information Memorandum in relation



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to which dues, proceedings seem to be pending by way of an Appeal before Hon'ble High Court of Madras. The composition of CoC as on 07.04.2019 has also been disclosed at page 68 of the Resolution Plan from which it is seen that the CoC had from time to time, by virtue of orders of this Tribunal undergone a change as compared to the one which was first constituted.

74. Since the application for Corporate Insolvency Resolution Process (CIRP) was filed by an Operating Creditor before the National Company Law Tribunal (NCLT) on 13.07.2018 and in the course of the aforesaid proceeding a Resolution Plan was submitted by RCC E-Construct Private Limited on 26.05.2019, it cannot be said that the income tax liability during the Corporate Insolvency Resolution Process, will be covered by the Order of the NCLT.

75. While filing the Revised Resolution Plan filed for taking over the management of the Petitioner Company, the Resolution Applicant, namely M/s. RCC E-Construct Private Limited was aware of the intimations under Section 143(1) of the Income Tax Act, 1961 and the Assessment Orders passed under Section 143(3) of the Income Tax Act, 1961 as has been tabulated in Paragraph No.69 of this Order.



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WEB COPY 76. Thus, when the Resolution Plan was presented on 13.07.2018, during the Financial Year 2017-2018, the income earned during the said Financial Year 2017 – 2018 was to be assessed during the Assessment Year 2018-2019.

77. In Chapter 5 under the Heading ‘Information’ in 5.7(ii) of the Revised Resolution Plan dated 26.05.2019 filed by the said Resolution Applicant it was mentioned that the Auditor shall audit the financials for the **Financial Year 2016-2017 [ie. Assessment Year 2017 -2018]** and for the **Financial Year 2017-2018 [ie. Assessment Year 2018 -2019]** as well as work out tax liabilities by 15th July 2019. This has been observed in breach.

78. In the Revised Resolution Plan also, no concession was claimed for the income assessable during the **Assessment Year 2018 -2019**. Indeed, no such concession could have been claimed towards the current liability by the said Resolution Applicant.

79. These Financials were to be signed by erstwhile promoters / directors of the Petitioner Company who were to assume liability and



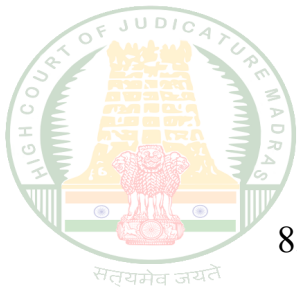
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responsibility for filing such Financials with the relevant Statutory Authorities.

80. In the event, such filings were required to be done by any Nominee Director to comply with any Statutory requirement, it was to be deemed that such Nominee Director and the Company shall be safeguarded and held immune from any claims and liabilities recognized or provided in such Financials, which are not disclosed, dealt with or accepted in this Resolution Plan.

81. Thus, the Resolution Applicant was aware of the liability incurred during the Corporate Insolvency Resolution Proceeding and was entitled to recover the same from the erstwhile management of the petitioner company.

82. Even if the petitioner was entitled to carry forward any loss of the previous **Assessment Years**, it was incumbent on the part of the said **Mr. Sundaresan Nagarajan**, as the Resolution Profession to have filed the Return of Income on either of the dates mentioned above for the **Assessment Year 2018-19**.



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83. The said **Interim Resolution Professional** merely invited claims under Section 13(1) read with Section 15(1) of the Insolvency and Bankruptcy Code, 2016 and later filed an application before the NCLT on **30.06.2019** for sanction of the Approved Resolution Plan of the Committee of Creditors.

84. In Paragraph 26 of the Order dated 13.12.2019, NCLT, stated as under:

***26. OBJECTIONS FILED BY THE INCOME TAX -
SR No. 4825 Dated 09.10.2019 in MA/554/2019***

26.1 The Deputy Commissioner of Income Tax, Corporate Ward – 5(2), Chennai, upon notice being issued, has filed its memo of objections to the Resolution Plan, wherein, it has been stated that the Corporate Debtor has outstanding demands for 5 years amounting to nearly 2 Crores as provided below:

Sl. No	Assessment Year	Demand in Rs.
1	2009 - 10	Rs.2,83,290/-
2	2013 - 14	Rs.11,16,620/-
3	2014 - 15	Rs.1,37,04,250/-
4	2015 - 16	Rs.13,12,217/-
5	2017 - 18	Rs.30,56,181/-



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26.2. It was further submitted by the Ld. Counsel for the Income Tax that the Resolution Applicant has sought for waiver of tax or interest dues in para 6.1, 6.5, 7.4 and 7.6 of the Resolution Plan, and as there are tax arrears that have been unpaid over several years, such violation cannot be overlooked by this Authority and hence prayed for not to grant any relief with respect to the same.

26.3. The Ld. Counsel for the Income Tax further submitted that, the Corporate Debtor has failed to file the Income Tax returns for the Financial Year 2016-17 and 2017-18 in accordance with section 139 of the Income Tax Act, 1961 and in para 7.13 of the Resolution Plan It has sought to carry forward the loss for set off in the subsequent years. The Ld. Counsel for the Income Tax strenuously contended that as per Section 119 of the Income Tax, Act, 1961, any waiver, relief or condonation of delay in filing of returns should be sought before the concerned Income Tax Authority by way of a proper Application and by stating reasons for seeking such waiver.

26.4. The Ld. Counsel for the Resolution Professional in reply submitted that in so far as the failure to file income tax returns by the Corporate Debtor for all prior periods is beyond the scope and control of the Resolution Applicant. It was further submitted by the Ld. Counsel for the Resolution Professional that the Resolution Applicant undertook to file the returns upon approval of the Resolution Plan.

26.5. The Resolution Applicant has filed a reply to the objections filed by the Income Tax, wherein it was pertinently stated that the present Resolution Plan had been prepared by the Resolution Applicant considering that the relief / waiver sought under the relevant



provisions of the Income Tax, 1961 will be granted to the Resolution Applicant.

*26.6. As regards the Relief and Concession in the Resolution Plan, it is relevant to refer to the recent decision of the Supreme Court in **Embassay Property Limited -Vs- State of Karnataka** in Civil Appeal No.9170 of 2019 dated 03.12.2019, wherein, the powers and jurisdiction of this Tribunal have been clearly delineated and it has been held wherever the Corporate Debtor has to exercise a right, that falls outside the purview of IBC, 2016, especially in the realm of the public law, this Tribunal does not have any jurisdiction to pass any orders. Also, the Hon'ble NCLAT in **JSW Steels Ltd. -Vs- Ashok Kumar Gulla & Ors** in Company Appeal (AT) (Insolvency) No.467 of 2019 has held that if a Successful Resolution Applicant is entitled to 'carry forward losses' under Section 79 of the Income Tax Act, it may claim such benefit before the appropriate Authority, who will pass appropriate order in accordance with Section 79 of the Income Tax Act, 1961 and the Rules and Regulations framed thereunder.*

85. In Paragraph 27.6, NCLT, stated as under:

“27.6. As to the Relief and Concessions sought for in the Resolution Plan, taking into consideration the Judgments of the Hon'ble Supreme Court and Hon'ble NCLAT, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is accordance with law.”

86. The above observation of the NCLT was after considering the



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submissions of the Resolution Applicant and the Resolution Professional
based on the available decisions of the Courts.

87. In view of the above, it is seen that paragraph 6.1 to Chapter 6 of the Revised Resolution Plan dealing with limitation of liabilities, has not been approved by the NCLT in its Order dated 13.12.2019.

88. That apart, as per clause 1.1 to Chapter-1 of Revised Resolution Plan dated 26.05.2019, the effective date is 27.01.2020, being the date after 45 days from the date of approval Revised Resolution Plan i.e., 13.12.2019. Thus, it was the intention of the Resolution Applicant that all the unsettled and unassessed statutory dues including direct and indirect taxes are to be waived and that the Resolution Applicant was provided with immunity in relation to the same except to the extent provided for in the Resolution Plan.

89. Therefore, the challenge to the impugned proceedings on the strength of *Essar Steel* (referred to *supra*) and **Ghanashyam Mishra** (referred to *supra*) cannot be countenanced.

90. Even if the Return of Income were not filed by the said Resolution



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Professional, the company should have filed Return of Income after the Resolution Plan was approved by the NCLT.

91. Thus, the petitioner cannot claim any immunity from the tax liability for **Assessment Year 2018-2019**. At best, the Resolution Applicant who has taken the petitioner company, can claim indemnity from the erstwhile Promoter of the Petitioner Company on the penal liability.

92. The approved Revised Resolution Plan cannot be construed to give immunity from the Tax liability incurred during the currency of the Corporate Insolvency Resolution Proceeding particularly after a Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 got triggered.

93. The current tax liability of a corporate debtor cannot be isolated under the provisions of the Insolvency and Bankruptcy Code, 2016.

94. Since the Revised Resolution Plan that was submitted in response to the Corporate Insolvency Resolution Process (CIRP) initiated against the Petitioner Company when the Petitioner Company was under the Control of Interim Resolution Professional appointed on 13.07.2018, no immunity from



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the Tax liability for the Assessment Year 2018-2019 can be claimed.

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95. The NCLT has also considered the objection of the Income Tax Department in Paragraph No.26.3 of its Order. It has specifically stated that the Corporate Debtor has failed to file the Income Tax Returns for the Financial Year 2016-2017 and 2017-2018 in accordance with Section 139 of the Income Tax Act, 1961.

96. The NCLT has also observed that the said Resolution Applicant had filed a reply to the objections filed by the Income Tax Department wherein it was stated that the Resolution Plan had been prepared by the Resolution Applicant considering that the relief / waiver sought under the relevant provisions of the Income Tax Act, 1961 which will be granted to the Resolution Applicant.

97. Therefore, there is no merit in the present Writ Petition challenging the impugned Order dated 31.03.2022 passed under Section 148A(d) of the Income Tax Act, 1961 and the impugned Assessment Order dated 31.03.2023 passed under Section 147 read with Section 144 of the Income Tax Act, 1961.

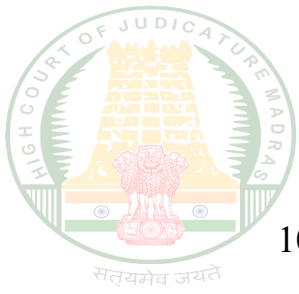


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WEB COPY 98. In Paragraph No.7.13 of the Revised Resolution Plan, the Resolution Applicant to carry forward the loss to set off the Tax Liability for the subsequent Assessment years. The Resolution Applicant was required to file applications under Section 119(2)(b) of the Income Tax Act, 1961 for waiver, relief of condonation of delay in filing of Returns of Income before the concerned Income Tax Authority stating reasons for seeking such waiver.

99. To claim such waiver, the Petitioner was required to file Return of Income for the Assessment Years in question together with such application under Section 119(2)(b) of the Income Tax Act, 1961 without filing such application and determination of the Income, such loss or such claims for set-off of Tax cannot be made for the subsequent Assessment Year.

100. The NCLT has also observed the submission in the Resolution Applicant in Paragraph No.26.4 of the Revised Resolution Plan wherein it has been stated that insofar as the failure to file Income Tax Returns by the Corporate Debtor for all prior periods is beyond the scope and control of the Resolution Applicant. It has been further stated that Resolution Applicant undertook to file the returns upon approval of the Resolution Plan.



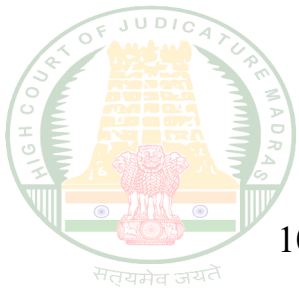
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101. In Paragraph No.26.6, the Tribunal has categorically referred to the decision of the Hon'ble Supreme Court in **Embassy Property Limited Vs. State of Karnataka** in Civil Appeal No.9170 of 2019 dated 03.12.2019. The Tribunal has also taken note of its own decision in **JSW Steels Limited Vs. Ashok Kumar Gulla and others** in Company Appeal (AT) (Insolvency) No.467 of 2019 wherein it was held that if a successful Resolution Applicant is entitled to 'carry forward losses' under Section 79 of the Income Tax Act, it may claim such benefit before the appropriate Authority, who will pass appropriate order in accordance with Section 79 of the Income Tax Act, 1961 and the Rules and Regulations framed thereunder.

102. In Paragraph No.27.6, the National Company Law Tribunal (NCLT) has directed the Resolution Applicant to file necessary application before the necessary Forum / Authority in order to avail necessary relief and concessions, if it is in accordance with law.

103. In this case, admittedly the Petitioner Company which has been taken over by the Resolution Applicant has failed to file necessary application for condoning the delay in filing return under Section 139(1) and Section 139(4) of the Income Tax Act, 1961 before the Appellate Authority.



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104. The Resolution Applicant namely RCC E-Construct Private Limited which has taken over the Petitioner Company had undertaken to file Return of Income upon the approval of the Resolution Plan and for Setting off loss during Subsequent Assessment Years.

105. Thus, the Petitioner which has been taken over by the Resolution Applicant, [namely, the RCCE-Construct Private Limited] ought to have approached the Central Board of Direct Taxes for condonation of delay in filing the Return for the **Assessment Year 2018-2019** for setting off loss if any for successive Assessment Years under Section 119(2)(b) of the Income Tax Act, 1961.

106. In going through the judgments of the Hon'ble Supreme Court applying the "*Clean Slate Theory*", it is evident that the facts before the Hon'ble Supreme Court where "*Clean Slate Theory*" was applied do not relate to dues or liability during CIRP period.

107. In all the cases where the principle of clean slate was applied related to dues/liabilities relating to pre-CIRP period. Therefore the ratio in **Ghanashyam Mishra** (referred to *supra*) and other cases applying

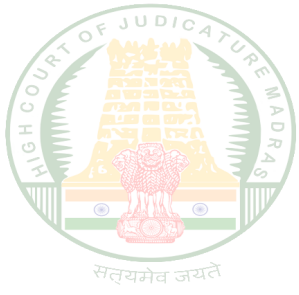


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“Clean Slate” can be confined only to pre-CIRP period alone. That being the case, **Ghanashyam Mishra** (referred to *supra*) cannot be treated as a binding precedent for dues/liabilities during CIRP period and therefore the clean slate theory would not in respect of dues/liabilities arising during CIRP period.

108. In the light of the above discussion, the decisions of the Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Sathish Kumar Gupta and others**, (2020) 8 SCC 531 or in **Ghanashyam Mishra and Sons Private Limited, Through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited, Through the Director and others**, (2021) 9 SCC 657 are to be held of no relevance.

109. Since the demand of Tax pertains to the Assessment Year 2018–2019 and the liability was determined for the period for which the Revised Resolution Plan was filed and considered by the NCLT, the Petitioner cannot ask for any relief out the approved Revised Resolution Plan. Consequently, issue that having been decided by the NCLT while approving the Revised Resolution Plan, it is not open for being re-agitated or interfered in collateral proceedings.



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WEB COPY110. Therefore, this Writ Petition is liable to be dismissed, and is accordingly dismissed with liberty to the Petitioner to work out the remedy in the manner known to law. Connected Writ Miscellaneous Petitions are closed. No costs.

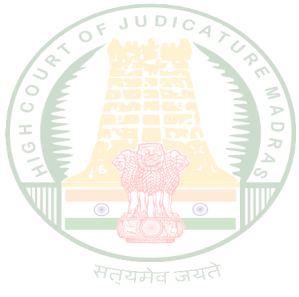
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Neutral Citation: Yes / No

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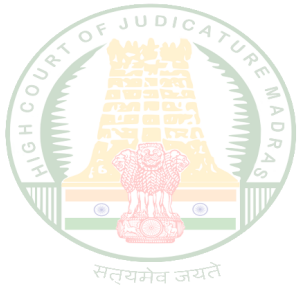
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C.SARAVANAN, J.

arb/raja

Pre-delivery Order in
W.P.No.27692 of 2023

16.03.2026