NEUTRAL CITATION

2026:GUJHC:31760-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6752 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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SWASTIK CERACON LIMITED & ANR.
Versus
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX CIRCLE-4(1)(1), AHMEDABAD & ANR.

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Appearance:
MR YUVRAJ G THAKORE(7785) for the Petitioner(s) No. 1,2
MS MAITHILI D MEHTA(3206) for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 07/05/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned Advocate Mr. Yuvraj G. Thakore for the petitioners and learned Senior Standing Counsel Ms. Maithili D Mehta for the Respondents.

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

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

> *"8(A) Your Lordships be pleased to issue an appropriate writ, order or direction to quash and set aside Assessment Order dated 12.03.2026 passed under Section 147 read with Section 250, 144B of the Income Tax Act, 1961*

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and bearing DIN No. ITBA/AST/S/147/2025-26/1087248328(1) being the impugned order [at Annexure-A] and

(B) Your Lordships be pleased to issue an appropriate writ, order or direction to quash and set aside Demand Notice dated 12.03.2026 ITBA/AST/S/156/2025-26/1087248431(1) being the impugned Demand [at Annexure- B];"

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

4.1. The petitioner No. 1 is a company incorporated under the Companies Act, 1956 on 31.01.2005 with its Corporate Identification Number being U26920GJ2005PLC045383, having its registered office at Survey Nos. 1071-74, Nandasan-Mehsana Road, National Highway No. 8, Kadi, Mehsana, Nandasan, Gujarat-380706. The petitioner No. 1 was engaged in the business of ceramics and manufacturing. The petitioner No. 2 is a director and shareholder of the petitioner No. 1. The petitioner No. 1 had filed the return of income under the provisions of the Income Tax Act, 1961 (for short "the Act") for the Assessment Year 2011-12.

4.2. While the management and control of the petitioner No. 1 was under its erstwhile promoters, an Assessment Order dated 17.12.2018 was passed under Section 147 of the Act for the Assessment Year 2011-12, raising a demand of INR 2,01,86,860/- (INR Two Crore One Lakh Eighty-Six Thousand Eight Hundred and Sixty Only). The said order was assailed by way of statutory appeal before the Commissioner of Income Tax (Appeals), being CIT(A), Ahmedabad - 4/1047478/2018-19.

4.3. The petitioner No. 1 was subjected to the insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (for

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short "IBC"), wherein an operational creditor, M/s. True Value Paper Co., preferred Company Petition (IB) No. 175 of 2018 under the provisions of Section 9 of the IBC before the National Company Law Tribunal, Ahmedabad Bench (for short "Tribunal"). A Corporate Insolvency Resolution Process (for short "CIRP") was initiated and the aforesaid Company Petition was admitted by the Adjudicating Authority vide Order dated 15.01.2019, *inter alia* declaring moratorium in terms of Section 14 of the IBC and appointing an Interim Resolution Professional.

4.4. The Interim Resolution Professional issued a Public Announcement on 29.01.2019 in accordance with Section 13, 15 and other relevant provisions of the IBC read with the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short "Regulations, 2016") thereby inviting claims from the various creditors including financial, operational and statutory creditors (including the Income Tax Department) of the petitioner No. 1.

4.5. The Resolution Professional was formally appointed by the Tribunal vide Order dated 20.03.2019 to take over the management of the petitioner No. 1 company and steer the resolution process.

4.6. Further, under the CIRP, the Resolution Plan of M/s. Ajita Sil Chem Private Limited, the successful Resolution Applicant, for the revival of the petitioner No. 1 was approved by the Tribunal vide Order dated 20.06.2022 passed in I.A. No. 428 of 2021 under Section 31 of the IBC. The said Resolution Plan provided for the

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extinguishment and waiver of all liabilities, claims, and dues payable prior to the 'Appointed Date' as defined in the Resolution Plan. The Plan Approval Order has attained finality and the approved resolution plan has been fully implemented.

4.7. The Resolution Professional, by way of Communication dated 01.07.2022, duly intimated the respondents of the passing of the Plan Approval Order, explicitly stating inter alia that under Section 31 of the IBC, all pre-CIRP claims and statutory dues not included in the plan stood permanently extinguished.

4.8. Thereafter, the Commissioner of Income Tax (Appeals) passed an order dated 27.11.2024 in the pending appeal, setting aside the first Assessment Order dated 17.12.2018 and remanding the matter back to the Assessing Officer for fresh adjudication.

4.9. Thereafter, the respondent No. 1 issued a Notice dated 03.11.2025 under Section 142(1) of the Act upon the petitioner No. 1. In response, the petitioner No. 1 issued a Communication dated 08.11.2025 explaining the IBC immunity and the factum of the approval of the Resolution Plan. Despite the same, the respondents issued a Communication dated 16.12.2025 rejecting the petitioner's argument.

4.10. The respondents thereafter issued a Show Cause Notice dated 20.02.2026 proposing an addition of INR 2,01,71,445/- as unexplained cash credit under Section 68 of the Act and INR 15,414/- as interest income for the Assessment Year 2011-12, ignoring the statutory 'Clean Slate' protections. In response, the petitioner No. 1

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issued a Communication dated 25.02.2026 reiterating the contents of the earlier communications and citing the Supreme Court precedents.

4.11. Disregarding all statutory mandates and judicial precedents, the respondents passed the impugned Assessment Order dated 12.03.2026 under Section 147 read with Section 250 read with Section 144B of the Act and issued the impugned Demand Notice dated 12.03.2026, illegally seeking to recover extinguished dues from the successful Resolution Applicant in respect of the pre CIRP period.

4.12. Challenging the legality of the impugned Assessment Order dated 12.03.2026 and the impugned Demand Notice dated 12.03.2026, the petitioners have filed this petition.

5. Learned Advocate Mr. Yuvraj G Thakore appearing on behalf of the petitioners submitted that on the approval of the Resolution Plan under Section 31 of the IBC, all dues of the Corporate Debtor except those which have been specifically provided for in the Resolution Plan would stand extinguished in terms of the provisions of the IBC and the decisions of the Apex Court in the case of *Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satishkumar Gupta* reported in (2020) 8 SCC 531 and in case of *Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. through the Directors & Ors.,* reported in (2021) 9 SCC 657. Learned Advocate submitted that in the present case, the tax dues for the Assessment Year 2011-12, which pertain to a period prior to the approval of the Resolution Plan, stand extinguished in terms of the Resolution Plan.

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5.1. Learned Senior Standing Counsel Ms. Maithili D Mehta for the respondent-Department is not in a position to controvert the position of law as far as the extinguishment of the tax dues are concerned in terms of Section 31 of the IBC. He however submits that in view of the said position, this Court may not enter into the merits of the issuance of the Assessment Order and Demand Notice.

6. DISCUSSION & FINDINGS :-

6.1. A perusal of the Resolution Plan of M/s. Ajita Sil Chem Private Limited which came to be approved on 20.06.2022 by the Tribunal would reveal that the following provisions as evident from the relevant portion extracted below :-

> "*9. All dues under the provisions of Income Tax Act, 1961("IT Act"), including taxes, duty, penalties, interest, fines, cesses, unpaid TDS / TCS, whether admitted or not, due or contingent, whether part of above claim of Income-tax authorities or not, whether part of Tax due diligence finding or not, asserted or unasserted, crystallized or not crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor and Resolution Applicants shall not be liable to pay any amount against such demand/ claim. All assessments/appellate or other proceedings pending in case of the Corporate Debtor, on the date of the order of NCLT relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be deleted and shall be considered to be not payable by the Corporate Debtor by virtue of the order of the NCLT, All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the date of the NCLT order and pending on that date, shall be considered deleted and shall not be proceeded against. Post the order of the NCLT, no re-assessment / revision or any other proceedings under the provisions of the Income Tax Act 1961 or allied Act shall be initiated on the Corporate Debtor or Resolution Applicants in relation to period prior to the Effective Date and any consequential demand shall be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of the NCLT.*"

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From the perusal of the above, it is evident that all tax liabilities, assessed and unassessed under the Income Tax Act, 1961 for the period prior to the approval of the Resolution Plan "shall stand waived and extinguished.

6.2. Furthermore, the Communication dated 01.07.2022 issued by the Resolution Professional to the respondents categorically stated that upon approval of the Resolution Plan by the NCLT under Section 31 of the IBC, all pre-CIRP claims and statutory dues stood permanently extinguished, and the ownership of the entity vests with the Resolution Applicant as clean slate.

6.3. Despite the above, the respondents proceeded with the remanded proceedings by passing an order to give effect to the CIT(A)'s directions dated 27.11.2024, thereby reviving an assessment for a period (A.Y. 2011-12) that was legally resolved by the NCLT order.

7. In case of **Committee of Creditors of Essar Steel India Ltd. (Supra)**, the Apex Court has held as under:-

> *"107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a*

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fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

8. In the case of **Ghanshyam Mishra and Sons Pvt. Ltd. (Supra)**, the Apex Court has categorically held as under:-

"102.1 That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2 The 2019 Amendment to Section 31 IBC is clarificatory and declaratory in nature and therefore will be effective from the date on which IBC has come into effect.

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

138. In the forgoing paragraph, we have held that the 2019 Amendment to Section 31 IBC is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject-matter of the petition are the proceedings which relate to the claims of the respondents prior to the approval of the plan, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished."

9. Therefore, applying the decisions of the Apex Court to the facts of the present case, it is clear that on the complete extinguishment of all tax liabilities of the Corporate Debtor upon the approval of the Resolution Plan on 20.06.2022, there could be no occasion whatsoever for the respondents to pass the impugned Assessment Order dated 12.03.2026

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under Section 147 read with Section 250 and Section 144B of the Act or to issue the impugned Demand Notice dated 12.03.2026 for the Assessment Year 2011-12. The assessment pertains to a period well prior to the approval of the Resolution Plan and therefore the tax dues, if any, for the said period stand extinguished by operation of law. In such view of the matter, the merits of the impugned Assessment Order and Demand Notice have become academic and need not be ventured into by this Court.

10. Resultantly, the petition succeeds and the impugned Assessment Order dated 12.03.2026 passed under Section 147 read with Section 250 read with Section 144B of the Income Tax Act, bearing DIN No. ITBA/AST/S/147/2025-26/1087248328(1) and the impugned Demand Notice dated 12.03.2026 bearing DIN No. ITBA/AST/S/156/2025-26/1087248431(1) are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(A. S. SUPEHIA, J)

(MAULIK J.SHELAT,J)

Radhika/2

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