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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	30.09.2026
Pronounced on	15.10.2026

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.25527 of 2026
and
W.M.P.(MD)Nos.19115 and 19117 of 2026

M/s.EMC Limited,
(Being a wholly owned subsidiary of
M/s.Salasar Techno Engineering Limited)
Represented by its Authorised Representative
Sharat Bajaj ... Petitioner

Vs.

1.The State Tax Officer,
Chokikulam Assessment Circle,
4th Floor,
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai – 625 020.

2.The Assistant Commissioner (ST),
Commercial Taxes Building,
Dr.Thangaraj Salai,
K.K.Nagar,
Madurai, Tamil Nadu – 625 020.

3.The Commissioner of Commercial Taxes,
Government of Tamil Nadu,
Ehilagam Building,
Kamarajar Road,

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Chepauk,
Chennai, Tamil Nadu – 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing Reference No.ZD331225452301X dated 30.12.2025 passed by Respondent No.1, quashing the same, and further to direct the Respondents to treat all proceedings pursuant to Show Cause Notice dated 03.09.2025 as abated and extinguished in view of the NCLT order dated 22.10.2024.

For Petitioner : Mr.Dipankar Majumdar

For Respondents : Mr.R.Parthiban
Special Government Pleader

ORDER

Mr.R.Parthiban, learned Special Government Pleader takes notice for the Respondents.

2. In this Writ Petition, the Petitioner has challenged the Impugned Order bearing Reference No.ZD331225452301X dated 30.12.2025 passed by the First Respondent under Section 73 of the respective GST Enactments.

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3. By the Impugned Order, demand for the **Tax Period 2021-2022** has been confirmed pursuant to the Show Cause Notice dated 03.09.2025 in DRC-01. The summary of demand confirmed *vide* the Impugned Order dated 30.12.2025 are as under:-

Act	Tax	Interest up to 30.12.2025	Interest on late reporting of invoices	Late fee	Penalty under Section 73(9)	Total
SGST	1358162	904201	0	450	135816	2398629
CGST	1358162	904201	0	450	135816	2398629
IGST	2243669	1493730	9149	0	224367	3970915
Total	4959993	3302132	9149	900	495999	8768173

4. The petitioner seeks to quash the same and to direct the respondents to treat all proceedings pursuant to the Show Cause Notice dated 03.09.2025 in DRC-01 as abated and have been extinguished, in view of the order passed by the National Company Law Tribunal dated **22.10.2024**.

5. It is the case of the petitioner that there has been an extinguishment of liability in terms of the decision of the Hon'ble Supreme Court reported in **Ghanshyam Mishra & Sons** Vs. **Edelweiss Asset Reconstruction Company Limited**, (2021) 9 SCC 657.

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6. The records reveal that a Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") proceedings was initiated under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") against the Petitioner by an Operational Creditor / Financial Creditor in C.P.(IB)No.1237/KB/2018 before the National Company Law Tribunal (NCLT).

7. However, the said CIRP proceedings did not culminate in the approval of Resolution Plan, pursuant to which an application was moved praying for liquidation and the same was accordingly allowed by the National Company Law Tribunal, Kolkata *vide* it's order dated 21.11.2023.

8. Thus, the Petitioner company was ordered to be wound up and was subsequently liquidated pursuant to the Order of the National Company Law Tribunal, Kolkata dated **22.10.2024** in C.P.(IB)No.1237/KB/2018 and sold as a "Going Concern" under Section 33 of the Code read with Regulation 32A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Petitioner Company was taken over as a "Going Concern" by M/s.Salasar Techno Engineering Limited and thus became its Holding Company.

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9. It is the argument of the Petitioner that the "**Clean Slate Principle**", as propounded and enunciated by the Hon'ble Supreme Court in Ghanshyam Mishra *(supra)* would apply even though there was no approval of CIRP before the National Company Law Tribunal, in view of the aforesaid Order of Liquidation. The learned Counsel for the Petitioner has placed reliance on the following cases:-

i. **Agniti Industrial Parks Pvt. Ltd.** Vs. **The Superintendent of CGST & Central**, W.P.No.11097 of 2021 dated 11.12.2023 (Madras High Court).
ii. **M/s.Rabirun Vinimay Pvt. Ltd. & Anr**. Vs. **Union of India & Ors**, WPA 27722 of 2024 dated 12.11.2025 (Calcutta High Court).
iii. **M/s.EMCO Limited** Vs. **The Joint Commissioner (State Tax) & Ors**, W.P.Nos.3962, 3963 and 3964 of 2024 (Telangana High Court) .
iv. **Kashvi Power & Steel Private Limited & Ors.** Vs. **West Bengal State Electricity Distribution CompanyLimited & Ors.**, W.P.A.No. 6327 of 2022 dated 12.08.2022 (Calcutta High Court)
v. **M/s. Shiv Shakti Inter Globe Exports Pvt. Ltd.** Vs. **M/s. KTC Foods Private Limited**, [Company Appeal (AT) (INSOLVENCY) No. 650 of 2020 -NCLAT, New Delhi dated 25.02.2022]
vi. **Gaurav Jain and Ors.** Vs. **Sanjay Gupta, Liquidator of Topworth Pipes & Tubes Pvt. Ltd.** [MANU/NC/4155/2021-National Company Law Tribunal Mumbai Bench]
vii. **Smilecate Multi Speciality Hospitals India Private Limited** Vs. **Mr. Rachamallu Ramachandra Reddy, Liquidator,** [TCP (IB)/54/7/AMR/2019 - National Company Law Tribunal Amravati dated 26.06.2024]

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viii. **Avenue Realty** Vs. **The Assistant Commissioner, Srirangam (GST Circle) & Ors.** [W.A.(MD)No.2662 of 2025 and C.M.P(MD)No.15106 of 2025 dated 17.04.2026]

ix. **Principal Commisstioner of Income Tax Central** Vs. **M/s. EMC Limited**, [SLP (C) Diary No(s). 22648/2023 dated 08.01.2026]

10. The learned Counsel for the Petitioner further submitted that the Respondent CGST Department had also earlier approached the National Company Law Tribunal, Kolkata in I.A. (I.B.C)/1008(KB)2022. However, their application was disposed of as infructuous on 23.11.2023 in view of order of the National Company Law Tribunal, Kolkata dated 21.11.2023 to liquidate the Petitioner Company, and thereby directed the Respondent Department to approach the liquidator for consideration of its claim in accordance with law.

11. It is submitted that the Liquidator of the Petitioner company issued a detailed letter dated 09.12.2023 to the Office of the Assistant Commissioner (State Tax), Chokikulam Assessment Circle, Madurai, by expressly intimating about the initiation of the liquidation process and specifically called upon the department to submit its claim on or before **21.12.2023** before the Liquidator.

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12. It is submitted that, despite the aforesaid order of liquidation, the Respondent Department failed and neglected to file any claim. In these circumstances, it is submitted that the claims of the Department have extinguished in view of the primacy of the Insolvency and Bankruptcy Code, 2016 as per Section 238 of the said Code.

13. It is submitted that the Impugned Order has been issued in gross violation of principles of natural justice, inasmuch as the Impugned Order has been passed under Section 88 of the respective GST Enactments, when in fact no such provision was cited in the Show Cause Notice dated 03.09.2025, thereby contravening the Section 75(7) of the respective GST Enactments.

14. It is further submitted that the Impugned Order was passed mechanically without any application of mind, insofar as the submissions made by the Petitioner were not considered by the Department.

15. On the other hand, the learned Special Government Pleader for the Respondent submits that the “Clean Slate Theory” as pleaded by the petitioner is not applicable for GST dues which had accrued after the

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commencement of the CIRP proceedings. In support of his contentions, the learned Special Government Pleader for the Respondent relied on the interplay Section 14 and 17(2)(e) of the Insolvency and Bankruptcy Code, 2016.

16. It is submitted that the **Explanation** to **Section 14** of the **Code**, clarifies that "**notwithstanding anything contained** in any other law for the time **being in force**, **a licence**, **permit**, **registration**, **quota**, **concession**, **clearances** or….." shall not be suspended or terminated on the grounds of insolvency. It is further submitted that, in order to make the said Explanation workable, it is necessary that the Annual Returns should be filed as per Section 44 of the respective GST Enactments.

17. It is submitted that if Section 44 is not complied, the GST registration for the company is liable to be cancelled as per Section 29 of the Act which would make the Explanation to Section 14 of the Code redundant.

18. It is further submitted that as per Regulation 12 framed under the Code, any claim by the Creditor has to be filed within 90 days. However, as per Section 73 (10) and Section 74(10) of the respective GST Enactments, it

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would suffice, if the proceedings are initiated at within 3 years and 5 years, respectively.

19. It is therefore submitted that it would be impossible for the GST Department to file their claims within 90 days as per the Regulations in respect of GST dues which arise after the commencement of the CIRP proceedings and therefore, the GST dues arising after the commencement of the CIRP proceedings are not covered by the "Clean Slate Theory". In this connection, reliance was placed on the following judgements of this Court :-

i. **Aqua Terra Coke and Energy Limited** Vs. **Income Tax Officer & 2 Ors**, W.P.Mo.22505 of 2024 & Batch dated 24.02.2026.
ii. **M/s. Transafe Services Ltd** Vs. **The Superintendent of Central GST and Central Excise**, W.P.No. 14266 of 2026 dated 10.04.2026.

20. I have considered the arguments advanced by the learned Counsel for the Petitioner and the learned Special Government Pleader for the Respondents and perused the materials available on record.

21. As stated elsewhere, the Petitioner company was initially exposed to a Corporate Insolvency Resolution Process (CIRP) in C.P. (IB)No.1237/KB/2018, the National Company Law Tribunal, Kolkata admitted the said CIRP *vide* its Order dated **12.11.2018**.

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22. However, the CIRP failed to materialize. Therefore, liquidation was prayed as a last resort and was accordingly ordered on **21.11.2023** by the National Company Law Tribunal. It is in this background, the Petitioner was sold as a Going Concern by the Liquidator which was approved by the National Company Law Tribunal (NCLT) on **22.10.2024**.

23. Though the actual date of Moratorium under Section 14 of the Code is not available from the records, it is evident and discernible that all the proceedings would have preceded a moratorium in 2018 under Section 14 of the Code.

24. As per Section 16 of the Code, the National Company Law Tribunal (NCLT) as the Adjudicating Authority as defined in Section 5(1) of the Code would have been appointed an Interim Resolution Professional (IRP) within 14 days of Insolvency Commencement Date (ICD) as defined in Section 5(12) of the Code i.e., the date of admission of application for CIRP before the National Company Law Tribunal (NCLT) under Section 7, 9 & 19, as the case may be. Same Resolution Professional (RP) would have been

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appointed as a Liquidator under Section 33 of the Code with the same powers.

25. During the Moratorium, the following are prohibited:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

26. Section 14(1) is however subject to Section 14(2) & 14(3) of the Code. As per *Proviso* to Section 14, the Moratorium shall cease to have effect, if at any time during the CIRP, where the Adjudicating Authority i.e., the National Company Law Tribunal (NCLT), either approves the Resolution Plan (RP) under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the Code.

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27. However, from the date of the appointment of the Interim Resolution Professional (IRP), the Petitioner Corporate Debtor against whom the proceedings have been initiated under the Code would have been under the control of the said Interim Resolution Professional (IRP). During this period, the Interim Resolution Professional (IRP) was appointed for complying with the statutory obligations under the applicable laws / statute.

28. In this case, admittedly, the proceeding under Section 10 of the Code was initiated against the Petitioner Corporate Debtor, in the year **2018**. The liability incurred by the Petitioner Corporate Debtor after the Interim Resolution Professional (IRP) was apppointed *i.e.,* when the period of Moratorium under Section 14 was in operation, cannot be written off under the scheme of the Code. The current tax liability of a Corporate Debtor cannot be isolated under the provisions of the Insolvency and Bankruptcy Code (IBC), 2016. I shall explain the position in due course.

29. Liquidation of a Corporate Debtor under Chapter III of the Code, which is titled as 'Liquidation Process'. There are about 23 provisions in Chapter-III of the Code. Sections 38 to 42 which deal with the claims submitted before the Liquidator has been omitted *vide* Insolvency and

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Bankruptcy Code (Amendment) Act, 2026 (Act No.6 of 2026). During the period in dispute when the order was passed by the National Company Law Tribunal (NCLT), these provisions were there in the Code.

30. According to Section 33, where the Adjudicating Authority i.e., the National Company Law Tribunal (NCLT) either fails to receive a Resolution Plan or rejects a Resolution Plan received by it, it shall pass an order requiring the corporate debtor to be **liquidated** in the manner as laid down in the said Chapter. Section 33 of the Code is extracted below:-

> *33. (1) Where the Adjudicating Authority, —*
>
> *(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*
> *(b)* ***rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,***
>
> *it shall—*
>
> *(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
> *(ii) issue a public announcement stating that the corporate debtor is in liquidation; and*
> *(iii) require such order to be sent to the authority with which the corporate debtor is registered.*

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(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

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31. Once a decision has been taken under Section 33 of the Code, to liquidate the Corporate Debtor in the manner laid down in Chapter-III of the Code, the Resolution Professional (RP) who was till then managing the affairs of the Corporate Debtor is to be appointed as a Liquidator subject to the written consent by such Resolution Professional to the Adjudicating Authority in the specified form. This is provided in Section 34(1) of the Code, which deals with appointment of Liquidator and the fee to be paid to the Liquidator.

32. Once a payment is made under Section 34(1) of the Code, the Liquidator has all the powers of the Board of Directors, Key Managerial Personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator.

33. An elaborate procedure has been prescribed for the Personnel of the Corporate Debtor of the Liquidator in the process of liquidation, and in this connection, the provisions of Section 19 of the Code shall apply in

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relation to voluntary liquidation as they apply in relation to liquidation process (Corporate Insolvency Resolution Process) with the substitution of references to the Liquidator for references to the Interim Resolution Professional (IRP). In other words, the procedure contemplated under Section 19 of the Code qua the Interim Resolution Professional is to apply to the Liquidator appointed under Section 33 of the Code.

34. Once the Liquidator is appointed, the Liquidator is vested with wide powers under Section 35 of the Code. The Liquidator is required to form an Estate of the Assets as is contemplated in Section 36(3) of the Code called "**Liquidation Assets"** in relation to the Corporate Debtor. Under Sub-Section (3) to Section 36 of the Code, the Liquidator holds the "Liquidating Estate Assets" as a fiduciary for the benefit of creditors which would also include an Operational Creditor like the Tax Department within the meaning of Section 3(10) of the Code.

35. The Liquidation Estate shall compromise all Liquidation Estate Assets as detailed in Sub-Section (3) to Section 36 of the Code. Similarly, certain categories of Liquidation Estates Assets shall not be used for effecting recovery pursuant to liquidation. For the sake of clarity, Section 36 of the

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Code is reproduced below:-

<table>
<tr><td colspan="2">36. Liquidation Estate:-</td></tr>
<tr><td colspan="2">(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.</td></tr>
<tr><td colspan="2">(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.</td></tr>
<tr><td>(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—
(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;</td><td>(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—
(a) assets owned by a third party which are in possession of the corporate debtor, including—
(i) assets held in trust for any third party;
(ii) bailment contracts;
(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
(iv) other contractual arrangements which do not stipulate transfer of title</td></tr>
</table>

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(c) tangible assets, whether movable or immovable; (d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights; (e) assets subject to the determination of ownership by the court or authority; (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter; (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest; (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and (i) all proceeds of liquidation as and when they are realised.	but only use of the assets; and (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator; (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions; (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter; (d) assets of any Indian or foreign subsidiary of the corporate debtor; or (e) any other assets as may be specified by the Board, including assets which could

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be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

36. That apart, Section 37(1) of the Code also gives the powers to the Liquidator to access any information systems for the purpose of admission and proof of claims and identification of the Liquidation Estates Assets relating to the Corporate Debtor from the following sources, namely :-

(a) an information utility;
(b) credit information systems regulated under any law for the time being in force;
(c) any agency of the Central, State or Local Government including any registration authorities;
(d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;
(e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;
(f) any database maintained by the Board; and
(g) any other source as may be specified by the Board.

37. In fact, once the Moratorium under Section 14 of the Code gets triggered, the Interim Resolution Professional (IRP), Resolution Professional (RP) or / as the case may be, the Liquidator would have all the informations particularly in relation to the Assets and Liabilities of the Petitioner Corporate Debtor as it was under the control of such person appointed by the

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National Company Law Tribunal (NCLT).

38. In this regard, Regulation 32 and Regulation 32A of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 are relevant. Regulation 32 and Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 has to be read in conjunction with Regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

39. For the sake of convenience, Regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is extracted below:-

> ***"39C. : Assessment of sale as a going concern.***
>
> *(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.*
>
> *(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f)*

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of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be."

40. Regulation 32 and Regulation 32A of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 are under the Chapter VI of the aforesaid Regulations under the heading "**Realisation of Assets**". Regulation 32A was inserted for the first time by the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 *vide* Notification No.IBBI/2019-20/GN/REG047 dated 25th July, 2019, with effect from 25.07.2019.

41. As per Regulation 32 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016, once a Liquidator has been appointed, the Liquidator may sell the asset or sell the Corporate Debtor or its business as a going concern as detailed below:-

<table>
<tr><th>Sale of Assets</th><th colspan="2">Sale of</th></tr>
<tr><td>(a)On a standalone basis; or</td><td rowspan="2">(e) the Corporate Debtor as a Going Concern</td><td rowspan="2">(f) the business of the Corporate Debtor as a Going</td></tr>
<tr><td>(b)in a slump sale; or</td></tr>
</table>

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(c)collectively or (d)in parcels or	Concern

42. Regulation 32 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 has undergone few cosmetic changes since the inception of the Code as detailed below:-

<table>
<tr><th colspan="4">Regulation 32</th></tr>
<tr><th colspan="2">Manner of Sale</th><th colspan="2">Sale of Assets, etc.</th></tr>
<tr><td>With effect from 15.12.2016</td><td>With effect from 01.04.2018</td><td>With effect from 22.10.2018</td><td>With effect from 14.10.2025</td></tr>
<tr><td colspan="2">The Liquidator may -</td><td colspan="2">The Liquidator may sell # -</td></tr>
<tr><td colspan="2">(a) Sell an asset on a standalone basis; or</td><td colspan="2" rowspan="2">(a) an asset on a standalone basis #</td></tr>
<tr><td colspan="2">(b) sell-
(i) the assets in a slump sale,
(ii) a set of assets collectively, or
(iii) the assets in parcels; or *</td></tr>
<tr><td></td><td>(c) sell the corporate debtor as a going concern. *</td><td>(b) the assets in a slump sale
(c) a set of assets collectively
(d) the assets in parcels.
(e) the corporate debtor as a going concern; or
(f) the business(es) of the corporate debtor as a going concern;</td><td>(b) the assets in a slump sale;
(c) a set of assets collectively;
or
(d) the assets in parcels;</td></tr>
<tr><td colspan="2"></td><td>Provided that</td><td>Provided that</td></tr>
</table>

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	-	*where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security therein has been relinquished to the liquidation estate.*	*where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (d) unless the security therein has been relinquished to the liquidation estate.*
Vide Notification No. IBBI/2016-17/GN/REG005 dated 15th December, 2016	Vide Notification No. IBBI/2017-18/GN/REG028, dated 27th March, 2018 *	Vide Notification No.IBBI/2018-19/GN/REG.037 dated 22nd October, 2018 #	Vide otification No. IBBI/2025-26/GN/REG129, dated 14th October, 2025

43. As per Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, as inserted with effect from 25.07.2019 *vide* Notification No.IBBI/2019-20/GN/REG 047 dated 25.07.2019 as it stood then, the Liquidator could sell the Corporate Debtor as a Going Concern, or the business of the Corporate Debtor as a Going Concern. Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 had also undergone the following substitutions and amendments:-

Regulation 32A: Sale as a going concern.		
With effect from	With effect from	With effect from

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25.07.2019	16.09.2022	12.02.2024
(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.		
(2) For the purpose of sale under sub-regulation (1), the **group of assets and liabilities** of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.		
(3) Where the committee of creditors has not identified the **assets and liabilities** under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and **group the assets and liabilities** to be sold as a going concern, in consultation with the consultation committee.		
(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commecncement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.	(4) The liquidator may sell the assets of the corporate debtor under clause (e) of regulation 32 exclusively only at the first auction. *	

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		[*Explanation* #: For the purpose of this sub-regulation, it is hereby clarified that the sale of the corporate debtor under clause (e) of regulation 32 cannot be offered as the only option for bidders after the first auction.]
		(5) Where the liquidator is of the opinion that it is viable to run the corporate debtor as a going concern, he shall consult the consultation committee and only on its advice he shall run the affairs of the corporate debtor as a going concern to the extent approved. #
Vide Notification No.IBBI/2019-20/GN/REG 047 dated 25th July, 2019	Vide Notification No.IBBI/2022-23/GN/REG094 dated 16th September, 2022 *	Vide Notification No.IBBI/2023-24/GN/REG112 dated 12th February, 2024 #

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44. Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as it stood when the National Company Law Tribunal (NCLT) passed its order in I.A.(IB)No.1140/KB/2024 in Company Petition(IB)No.1237/KB/2018 on **22.10.2024**, reads as under:-

> ***32A. Sale as a going concern.***
>
> *(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.*
>
> *(2) For the purpose of sale under sub-regulation (1), the **group of assets and liabilities** of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.*
>
> *(3) Where the committee of creditors has not identified the **assets and liabilities** under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and **group the assets and liabilities** to be sold as a going concern, in consultation with the consultation committee.*
>
> *[(4) The liquidator may sell the assets of the corporate debtor under clause (e) of regulation 32 exclusively only at the first auction.]]*

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[Explanation: For the purpose of this sub-regulation, it is hereby clarified that the sale of the corporate debtor under clause (e) of regulation 32 cannot be offered as the only option for bidders after the first auction.]

[(5) Where the liquidator is of the opinion that it is viable to run the corporate debtor as a going concern, he shall consult the consultation committee and only on its advice he shall run the affairs of the corporate debtor as a going concern to the extent approved."

Discussion / Analysis of the Provisions of the Code / Regulation:

45. Ordinarily, during the course of CIRP under Section 30 & 31 of the Code, the re-structuring of the Corporate Debtor takes place, where the Committee of Creditors play a pivotal role in deciding how the debt [whether Operational and/or Financial debt(s) or both] are to be dealt with. The Resolution plan recommended by the Committee of Creditors has to be further approved by the Adjudicating Authority viz, the National Company Law Tribunal (NCLT) under Section 31 of the Code.

46. Where, however, it is decided to liquidate the Corporate Debtor under Section 33 of the Code, a different set of provisions *viz.* Regulations 32 & 32A the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** come into play.

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47. During the course of Liquidation under Section 33 of the Code, either the Resolution Professional is either re-designated as the Liquidator or is appointed afresh.

48. **Regulation 32** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** deals with Sale of Assets etc. of a Corporate Debtor in general.

49. **Clauses (e) & (f)** of **Regulation 32** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016,** deal with the Sale of :-

1. '**Corporate Debtor as a Going Concern';** and
2. '**Business(es) of the Corporate Debtor as a Going Concern'**.

Respectively.

50. In this Case, the Petitioner Corporate Debtor was sold as a Going Concern under Regulation 32 (e) read with Regulation 32A of Regulation 32A of the **Insolvency & Bankruptcy Board of India (Liquidation**

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Process) Regulations, 2016. Regulation 32A specifically deals with "Sale of a Going Concern".

51. As per **Regulation 32A(1)** of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016,** where, either

1. the **Committee of Creditors,** has recommended sale under **clause (e)** or **(f)** of **Regulation 32** of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016** during CIRP**;** or

2. where the liquidator is of the opinion that sale under **clause (e)** or **(f)** of the **Regulation 32** of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016** will maximise the value of the corporate debtor,

the liquidator shall endeavour to **first sell** under the said clauses of the said Regulation.

52. Regulation 32A(2) has to be read along with Regulation 39C(2) of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**

53. As per **Regulation 39C(1)** of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,** while:-

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1. Approving a Resolution Plan under section 30; or
2. **Deciding to Liquidate the Corporate Debtor under section 33,**

the Committee may recommend that the liquidator may,-

1. first explore **Sale of The Corporate Debtor as a Going Concern** under regulation 32**(e)** of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ;** and if same is not possible, thereafter,
2. sale of the **Business of The Corporate Debtor as a Going Concern** under **Regulation 32(e)** of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**,

if an order for liquidation is passed under Section 33 of the Code.

54. Under Regulation 39C(3) of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,** during CIRP, the Resolution Professional would have submitted the recommendation of the Committee before the Adjudicating Authority for approval under Section 30 & 33.

55. For the purpose of sale under Regulation 32 (e) & (f) of **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016**

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during the course of the Liquidation under Section 33 of the Code, the Assets & Liabilities identified during the course of CIRP by the Committee of Creditors under Regulation 39C(2) of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** shall be sold as a Going Concern under Regulation 32A(2) of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016**.

56. Where, however, no identification of Assets & Liabilities was made by the Committee of Creditors under Regulation 39C(2) of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** during CIRP under Section 31 of the Code, the Liquidator appointed under Section 34 of the Code during liquidation under Section 33 of the Code has to identify the group of Assets & Liabilities of a Corporate Debtor to be sold as a Going Concern in consultation with the Committee of Creditors. This has been provided under Regulation 32A(3) of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.**

57. Thus, to implement Regulation 32 (e) & (f) of the **Insolvency &**

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Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 32A has been provided. Regulation 32A in turn relies on the Group of Assets & Liabilities identified under Regulation 39C(2) of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** by the Committee of Creditors during the course of CIRP.

58. It has to be also emphasized that under **Regulation 32A(4)** of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**, the Liquidator has to sell the Corporate Debtor as a Going Concern **exclusively at the First Auction**.viz., as is contemplated in **Clause (e)** of **Regulation 32** of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.**

59. In terms of **Regulation 32A(5**) of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**, where the Liquidator is of the opinion that it is viable to run the Corporate Debtor as a Going Concern, the Liquidator after consulting the Committee can run the affairs of the Corporate Debtor on the advice of the Consultation Committee alone.

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60. In this case, admittedly, the CIRP failed and therefore, the National Company Law Tribunal, decided to liquidate the petitioner Corporate Debtor under **Section 33** of the **Code.**

61. From, a reading of Order dated **22.10.2024** of the NCLT in **I.A. (IB)No.1140/KB/2024** in **Company Petition(IB)No.1237/KB/2018** passed under Section 33 of the Code read with **Regulation 32(e)** and **Regulation 32A** of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016** and **Regulation 39C** of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,** which approved the Sale of the petitioner as a going concern to **M/s.Salasar Techno Engineering Limited**, it is not clear, as to whether the sale emanated from the recommendation of the Committee of Creditors under Regulation 32A(2) or was on account of the opinion of the Liquidator for the sale of the petitioner Corporate Debtor, as a Going Concern under Regulation 32A(3) to the said company.

62. However, after the Petitioner Corporate Debtor was sold as a "Going

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Concern" to **M/s.Salasar Techno Engineering Limited** by the Liquidator, presumably following one of the above procedure with the approval of the National Company Law Tribunal under the above provisions, the Petitioner became the subsidiary of the said **M/s.Salasar Techno Engineering Limited**.

63. While approving the sale of the petitioner Corporate Debtor under the aforesaid Regulations, the National Company Law Tribunal in its aforesaid order dated **22.10.2024,** has not approved the sale of 'Assets" *simpliciter, sans* the liability, to the said **M/s.Salasar Techno Engineering Limited.** The sale was indeed with the liabilities of the Petitioner Corporate Debtor as a Going Concern.

64. In fact, NCLT could not have approved the sale of Assets of the Petitioner Corporate Debtor *simpliciter, sans* the liability under the scheme of the above Regulations.

65. All that the National Company Law Tribunal has stated in its aforesaid order dated **22.10.2024** is that the petitioner will be entitled for relief as per the decision of the Hon'ble Supreme Court in **Ghanashyam**

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Das case. However, there has been no adjudication or application of mind on this aspect by the National Company Law Tribunal.

66. Instead of winding up the affairs of the Corporate Debtor and liquidating its assets and distributing the proceeds thereof under Section 53 of the Code, the Liquidator under **Regulation 32(e)& (f)** and **Regulation 32A** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** read with **Regulation 39C(2)** of the **Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**, merely sells the identified assets and liabilities of the Corporate Debtor as a "Going Concern", lock, stock and barrel.

67. When a Corporate Debtor is sold as a Going Concern, the buyer not only purchases the assets but also the liabilities of the Corporate Debtor as a package and not merely the assets *sans* the liabilities of the said Corporate Debtor.

68. The buyer takes a calibrated risk while buying the assets and liabilities of the Corporate Debtor when the Corporate Debtor is sold as a

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"Going Concern" under **Regulation 32(e)** read with **Regulation 32A** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** read with **Regulation 39 C(2)** of the **Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**

69. Therefore, after buying the Corporate Debtor as a "Going Concern", the buyer or the new management of the Corporate Debtor cannot avoid either the past and/or the current liability incurred or liability incurred during the Moratorium under Section 14 of the Code and during the CIRP / Liquidation, as the case may be.

70. It is for this purpose, the assets and liabilities identified under **Regulation 39C(2)** of the **Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** by the Committee of Creditors or by the Liquidator under **Regulation 32A(3)** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016,** before a sale is effected by the Liquidator.

71. The Purchase Value of the Corporate Debtor is infused into the

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capital of the Corporate Debtor and increases the net worth of the Corporate Debtor. This is similar to the treatment under the erstwhile Sick Industrial Companies (Special Provisions) Act, 1985, without any reduction of the liability.

72. In a sense, **Regulations 32 & 32A** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** and **Regulation 39C** of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** form a Triangle in the context of sale of assets of the Corporate Debtor as per the **Code** and the above **Regulations** made thereunder.

73. It would have been different in the case of sale under **Clause (a) to (d) of Regulation 32** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016,** where:

1. merely an asset of the Corporate Debtor is sold on a standalone basis; or
2. the assets of the Corporate Debtor is sold in a slump sale; or
3. a set of assets of the of the Corporate Debtor is collectively sold; or

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4. the assets of the of the Corporate Debtor in parcels

74. There the Liquidation would have culminated in the dissolution of the Corporate Entity itself under Section 54 of the Code. There, possibly the "Clean Slate Rule" as enunciated in **Ghanashyam Case** may apply as the Corporate Debtor is liquidated.

75. The amount recovered from such sale under Regulation 32(a) to (d) of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** has to be distributed only in such manner as is contemplated under Section 53 of the Code and in such order as has been recognized by the Hon'ble Supreme Court in **Ghanashyam's case** as in the case of successful CIRP.

76. The distribution of the Liquidated assets of the Corporate Debtor after its sale, has to be carried out in accordance with the order of priority under Section 53 of the Code. Whereas, in the case of Sale of the Corporate Debtor as a Going Concern or the Sale of Business of the Corporate Debtor, as a Going Concern, there is no disintegration of the Corporate Identity of the Corporate Debtor as it survives with new funds being infused for carrying on

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the same business.

77. However, where the sale of the Corporate Debtor is under Regulation 32(e) & (f) read with Regulation 32A of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016,** a different yardstick applies.

78. When the Corporate Debtor is sold as a "Going Concern" under **Regulation 32(e)** read with **Regulation 32A** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** read with **Regulation 39 C** of the **Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,** the buyer understands bargain in the purchase and risk associated with it. The buyer not only buys the existing assets at the value determined but also the liability of the Corporate Debtor.

79. The reliance placed on the decisions of the Tribunals at Paragraph Nos.19 & 22 of the Order date 22.10.2024 by the National Company Law Tribunal, Kolkata are *per incuriam* and are in any event not binding on this Court.

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80. The decision of the **Calcutta High Court** in **Kashvi Power & Steel Private Limited & Another** Vs. **West Bengal State Electricity Distribution Company Limited & Others,** in **W.P.A.No.6327 of 2022** dated **12.08.2022**, has taken a somewhat diametrically contrary view to the above Scheme, that the Petitioner therein was entitled to the relief sought for it by extending the benefit of the "Clean Slate Rule". There, the Calcutta High Court dealt with pre-CIRP liability of the Corporate Debtor.

81. In **Kashvi Power** *(supra),* the Respondent No.3, a Corporate Debtor was acquired as a going concern through liquidation sale under the powers of the Code. When the Respondent No.1-State Electricity Distribution Company denied its services for the past dues of the Corporate Debtor *i.e.,* pre-CIRP liabilities incurred by the Corporate Debtor, the **Calcutta High Court** held that the dues that were pending prior to liquidation sale were extinguished with the following observation while interpreting the very same provisions:-

> *58. Thus, the operational creditors, who fall within category (f), that is, "any remaining debts and dues", cannot claim any priority over the preceding categories in having their debts paid off.*
>
> *59. However, that is precisely what will happen if the argument of the WBSEDCL is accepted, that is, if the expression "sale of going concern", as used in the IBC and connected*

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Regulations in respect of liquidation, is construed to include transfer of pre-CIRP liabilities of the corporate debtor.

60. *Regulation 32-A of the Liquidation Process Regulations of 2016 clearly specifies that "liabilities" for the purpose of going concern sales in liquidation are only those liabilities which have been identified and earmarked for the going concern sale by the committee of creditors, if not, by the liquidator.*

61. ***The said provision, read with Regulation 39-C of the Corporate Persons Regulations, 2016, is unambiguous and leaves no scope of construing that all the liabilities, including pre-CIRP liabilities, are transferred to the successful Resolution Applicant in a going concern sale.***

62. *It is well-settled that the debts of the power distribution licensee do not operate as charge on the assets of the corporate debtor.*

63. *Hence, both sale of the corporate debtor and the business(es) of the corporate debtor as a going concern, as envisaged in Regulation 32, Clauses (e) and (f) respectively, do not contemplate automatic transfer of all pre-CIRP liabilities of the corporate debtor to the auction purchaser.*

64. *In any event, the Regulations framed under the authority conferred by the IBC cannot be construed to override the provisions of the Code itself. Hence, no interpretation contrary to Section 53 of the IBC which, again, is preceded by a non obstante clause, can be attributed to the expression "going concern sale", as contemplated in Rule 32 of the Liquidation Process Regulations, 2016.*

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The case dealt with pre-CIRP dues of the said Company, namely, **Kashvi Power & Steel Private Limited & Another.**

82. The principle in **Kashvi Power** *(supra)* was blindly followed by the Calcutta High Court in the case of **M/s.Rabirun Vinimay Pvt. Ltd. & another** Vs. **Union of India**, W.P.A.27722 of 2024 dated 12.11.2025, wherein the facts are identical to the facts of the present case.

83. I am afraid such an erroneous interpretation of the Regulation with the view to defeat the very object of Code & the above Regulation are unacceptable in view of the discussion above.

84. The decisions of the Calcutta High Court cited above, as also, the decisions of the Calcutta Bench of the National Company Law Tribunal are not correct, in view of the Scheme under Regulation 32 (e) & (f) and Regulation 32A of the **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016** read with Regulation 39C of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**

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85. That apart, in the present case, the Order passed by the **National Company Law Tribunal** on **22.10.2024** in C.P. (IB) No. 1237/KB/2018 in granting the relief of approval of sale of the Petitioner company, as a "Going Concern" to **M/s. Salasar Techno Engineering Limited**, with effect from **16.05.2024** has to be read in the context of **Chapter – III** of the **Code** encompassing **Sections 33 to 54**, as they stood along with **Regulations 32 & 32A** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** and **Regulation 39C(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** as they form a Code by themselves in so far as sale of the Corporate Debtor as a "Going Concern".

86. Section 53 of the Code has no application in the context of Sale of the Corporate Debtor as a Going Concern under **Regulation 32(e)** read with **Regulation 32A** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016** read with **Regulation 39 C** of the **Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**

87. The observation of the National Company Law Tribunal in its Order dated 22.10.2024 in I.A.(IB)No.1140/KB/2024 in C.P.(IB)No.1237/KB/2018

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that the reliefs granted are strictly in accordance with **Ghanashyam Mishra** *(supra)* is superfluous. The said decision did not deal with a situation on sale of asset of Corporate Debtor as a Going Concern under **Regulation 32 (e)** or **(f)** read with **Regulation 32A** of the **Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016**, and **Regulation 39C** of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**, as inserted in the year 2019.

88. The reliance placed by the Petitioner on the decision of a learned Single Judge of this Court in **Agniti Industrial Parks Pvt. Ltd.** Vs. **The Superintendent of CGST & Central**, in W.P.No.11097 of 2021 dated 11.12.2023, is not applicable to the facts of the present case as the the claims therein relate to the period prior to the commencement of liquidation.

89. Subsequent to the above decision, the Learned Single Judge had also passed another judgement in a batch of Writ Petitions in **Aqua Terra Coke and Energy Limited** Vs. **Income Tax Officer & Ors**, W.P.Nos.22505 of 2024 etc., batch where the Learned Judge had extensively examined the tax

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legislations, more particularly the Tamil Nadu Goods and Services Tax Act, 2017, *vis-a-vis* the Insolvency and Bankruptcy Code, 2016, and had stressed the *sui generis* nature of the respective GST Enactments, in the context of dues arising during CIRP.

90. Similar views were also taken by this Court in **P DOT G Constructions Private Limited** Vs. **Assistant Commissioner of Income Tax** in W.P.No.27692 of 2023, and in **M/s. Transafe Services Ltd** Vs. **The Superintendent of Central GST and Central Excise** in W.P.No.14266 of 2026.

91. Thus, there is no merit in the challenge to the Impugned Order in this Writ Petition, and therefore, this Writ Petition does not warrant any interference and is liable to be dismissed.

92. Further, under Section 85(1) of respective GST Enactments, where a taxable person, liable to pay GST, transfers his business **in any manner whatsoever**, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable to the extent of such transfer.

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93. Likewise, under Section 85(2), the transferee of a business is liable to pay GST on transactions effected after the date of such transfer and shall apply for amending his registration. Section 85 of the respective GST Enactments is extracted below:-

Section 85. Liability in case of transfer of business.-

(1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

94. Considering the fact that the Petitioner has not filed an effective reply before the Respondent Department and might have a case in terms of Section

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85 of the respective GST Enactments, I am inclined to remit the case back to the Respondent for *de novo* adjudication subject to the Petitioner depositing 25% of the disputed tax liability within a period of 30 days from the date of receipt of a copy of this order.

95. Within such time, the Petitioner shall file a detailed reply to the Show Cause Notice dated 03.09.2025 by treating the Impugned Order dated 31.12.2025 as an addendum to the said Show Cause Notice. The Respondent shall proceed to dispose of the case of the Petitioner on merits within a period of 3 months thereafter.

96. In the result, this Writ Petition is disposed of with the above directions. No costs. Connected Writ Miscellaneous Petitions are closed.

15.10.2026

Neutral Citation : Yes / No

sji/apd/arb

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To:

1.The State Tax Officer,
Chokikulam Assessment Circle,
4th Floor,
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai – 625 020.

2.The Assistant Commissioner (ST),
Commercial Taxes Building,
Dr.Thangaraj Salai,
K.K.Nagar,
Madurai, Tamil Nadu – 625 020.

3.The Commissioner of Commercial Taxes,
Government of Tamil Nadu,
Ehilagam Building,
Kamarajar Road,
Chepauk,
Chennai, Tamil Nadu – 600 005.

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C.SARAVANAN, J.

sji/apd/arb

Order in
W.P.(MD)No.25527 of 2026

15.10.2026

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