IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.303
IA/1480(AHM)2025
in
CP(IB) 385 of 2020

Under Section 60(5) IBC r/w Rule 11 NCLT

IN THE MATTER OF:

Shreebhav Polyweaves Pvt. Ltd & Anr ....**Applicant**
V/s
Deputy Commissioner of Income Tax, Surat & Anr ....**Respondent**

Order delivered on: 22/07/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

SD/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT –I, AHMEDABAD

IA/1480 (AHM) 2025
In
CP(IB) No. 385 of 2020

(An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

1. **Shreebhav Polyweaves Priviate Limited**
   Through its authorized director
   Sudharshan Agarwal
   Having its address at
   238-2740, Unity Estate, Bhestan,
   Surat, Gujarat- 395 023.

2. **GMSRA Infracon Private Limited**
   Through its authorized director
   Sudarshan Agarwal
   Having its address at
   Azalea Apartment, Plot No. 39,
   Dhuleshwar garden, C-scheme,
   Jaipur-302001.

...Applicants

VERSUS

1. **Deputy Commissioner of Income Tax, Surat**
   Circle 2(1)(2), Surat
   2nd Floor, Aayakar Bhavan, Surat,
   Email: SURAT.DCIT2.1.@INCOMETAX.GOV.IN

2. **Centralized Processing Center**
   Income Tax Department
   Bengaluru

... Respondents

Order pronounced on: 22.07.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E

For the Applicant	: Mr. Mohit Gupta, Advocate
For the Respondent Income Tax Department	: Ms. Kinjal Trivedi, Advocate

O R D E R
Per Bench

1. The present Interlocutory Application has been filed on 28.11.2025 by the Applicants under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking, inter alia, declaration that the adjustment of income-tax refunds by the Respondent against pre-CIRP tax demands is contrary to the Resolution Plan approved by this Adjudicating Authority on 27.09.2023, and for consequential refund of the amounts so adjusted together with appropriate reliefs.

2. The Applicant has placed the facts through the Interlocutory Application and the documents on record in the following manner: -

2.1 It is stated that Applicant No.1 was admitted into the Corporate Insolvency Resolution Process by order dated 31.08.2021. Applicant No.2 emerged as the Successful Resolution Applicant and the Resolution Plan submitted by it was approved by this Adjudicating Authority by order dated 27.09.2023. Copies of the orders dated 31.08.2021, the Resolution Plan and the order dated 27.09.2023 are annexed as Annexure-A1, Annexure-A2 and Annexure-A3, respectively.

2.2 It is stated that the approved Resolution Plan specifically deals with the contingent liabilities relating to income-tax dues under Clauses 2.9.8, 3.6.1 and 3.6.4. According to the Applicant, the total income-tax contingent liability of Rs.71,22,363/- forms part of the overall contingent liabilities and is payable only in the manner provided under the approved Resolution Plan.

2.3 The Applicant has contended that the Income Tax Department did not submit its claim before the Resolution Professional during the Corporate Insolvency Resolution Process. The Applicant submits that except to the extent provided in the approved Resolution Plan, all statutory dues and claims stood extinguished upon approval of the Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016.

2.4 It is stated that refunds of Rs.7,91,650/- for Assessment Year 2023-24 and Rs.14,17,670/- for

Assessment Year 2024-25 became due to the Corporate Debtor under intimations issued under Section 143(1) of the Income-tax Act, 1961 dated 29.11.2023 and 11.12.2024, respectively. Copies of the said intimations are annexed as Annexure-A4 and Annexure-A5.

2.5 It is stated that the Respondent adjusted the aforesaid refund amounts against the outstanding demand relating to Assessment Year 2012-13 by invoking Section 245 of the Income-tax Act, 1961. The Applicant submits that such adjustment is contrary to the approved Resolution Plan. Copies of the intimation under Section 245 and the refund status are annexed as Annexure-A6 and Annexure-A7.

2.6 It is further stated that refund of Rs.5,14,310/- relating to Assessment Year 2022-23 was also adjusted on 04.11.2022 during the moratorium period against the earlier tax demand. According to the Applicant, the said adjustment is contrary to Section 14 of the Insolvency and Bankruptcy Code, 2016. A copy of the intimation dated 04.11.2022 is annexed as Annexure-A8.

2.7 It is stated that representations dated 13.12.2024 and 30.05.2025 were submitted before the Respondent requesting release of the adjusted refund amounts. Thereafter, the Respondent passed orders dated 28.03.2025 under Section 156A of the Income-tax Act, 1961 giving effect to the Resolution Plan and reducing the outstanding tax demands to Nil. Copies thereof are annexed as Annexure-A9 (Colly.) and Annexure-A10 (Colly.).

2.8 It is submitted that the approved Resolution Plan is binding upon all stakeholders, including statutory authorities, under Section 31 of the Insolvency and Bankruptcy Code, 2016. The Applicant contends that adjustment of the refund amounts beyond the treatment provided in the Resolution Plan is not permissible and is contrary to the provisions of the Code.

2.9 The Applicant has relied upon the provisions of Sections 14, 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016 and the orders passed under Section 143(1), Section 245 and Section 156A of the Income-tax Act, 1961. The Applicant has also placed reliance upon the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657, in support of its contentions.

2.10 In view of the above facts, the Applicant has sought declaration that the adjustment of the income-tax refunds against the pre-CIRP tax demands is contrary to the approved Resolution Plan and the provisions of the Insolvency and Bankruptcy Code, 2016, and has further sought refund of the amounts so adjusted, together with consequential reliefs and such other orders as this Adjudicating Authority may deem fit.

3. That on issuance of the notice, the Respondent/Income Tax Department on 29.06.2026 vide inward diary No. D-5313 has filed an **Affidavit in Reply.** The relevant portion of the said reply is reproduced as under: -

3.1 It is stated that the Respondent has denied the averments made in the Interlocutory Application except those specifically admitted. The Respondent submits that prior to commencement of the Corporate Insolvency Resolution Process, income-tax demands for Assessment Years 2011-12, 2012-13, 2014-15 and 2017-18 aggregating to Rs.50,49,233/- had already been raised against the Corporate Debtor.

3.2 It is stated that after commencement of the Corporate Insolvency Resolution Process on 31.08.2021, the Respondent was impleaded in I.A. No.205(AHM)/2023 relating to approval of the Resolution Plan. Pursuant thereto, the Respondent filed its report dated 15.03.2023 before this Adjudicating Authority placing on record the outstanding tax demands and stating that the Corporate Debtor had defaulted in payment of taxes.

3.3 It is stated that the return of income for Assessment Year 2023-24 was processed under Section 143(1) of the Income-tax Act, 1961 and refund of Rs.7,91,650/- was determined. Since an outstanding demand for Assessment Year 2012-13 was available in the departmental records, intimation under Section 245 was issued and the refund was adjusted on 29.01.2024 in accordance with the provisions of the Income-tax Act, 1961.

3.4 It is further stated that the return for Assessment Year 2024-25 was processed and refund of Rs.14,17,670/- was determined. Notice under Section 245 was issued proposing adjustment against the outstanding demands for Assessment Years 2011-12, 2012-13 and 2017-18, and the refund was adjusted on 23.01.2025, as the demands continued to remain collectible in the departmental system.

3.5 It is stated that the Applicant submitted an application for giving effect to the Resolution Plan only on 13.12.2024. Thereafter, orders under Section 156A of the Income-tax Act, 1961 were passed on 28.03.2025, whereby the outstanding demands for Assessment Years 2011-12, 2012-13, 2014-15 and 2017-18 were reduced to Nil in accordance with the approved Resolution Plan.

3.6 It is stated that the adjustments made under Section 245 of the Income-tax Act, 1961 were valid on the respective dates, as the outstanding demands continued to exist in the departmental records until the consequential orders under Section 156A were passed. According to the Respondent, the subsequent modification of the demand does not render the earlier statutory adjustments invalid.

3.7 It is further submitted that adjustment of refund under Section 245 constitutes statutory set-off against the outstanding tax demand and does not amount to an independent recovery action contrary to the Insolvency and Bankruptcy Code, 2016. The Respondent has also relied upon Section 36(4)(e) of the Insolvency and Bankruptcy Code, 2016 and Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016 in support of its contention regarding mutual dealings and set-off.

3.8 The Respondent has relied upon the judgments of the Hon'ble Supreme Court in CIT v. Hindustan Petroleum Corporation Ltd., (2007) 291 ITR 617 (SC) and Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657. The Respondent has also referred to the provisions of Sections 245 and 156A of the Income-tax Act, 1961 in support of its submissions.

3.9 It is stated that the adjustments were made only towards the outstanding tax liability reflected in the departmental records and did not result in recovery beyond the tax demands. According to the Respondent, the adjustments were made in accordance with the statutory provisions applicable on the respective dates and do not violate the Insolvency and Bankruptcy Code, 2016.

3.10 In view of the above facts, the Respondent has sought dismissal of the present Interlocutory Application by contending that the refund adjustments were made in accordance with the Income-tax Act, 1961, that the actions of the Respondent are valid in law, and that no relief is liable to be granted to the Applicant.

4. After filing a Reply Ld. Counsel for the Applicant/SRA seeks and is granted ten days' time for filing a rejoinder. On the next date of hearing i.e., on 15.07.2026 it is recorded that "On 29.06.2026, ten days' time was granted to the Applicant/SRA to file its rejoinder, and the matter was listed today for arguments and disposal of the IA. When the matter was first called, learned proxy counsel for the Applicant/SRA sought further time to file the rejoinder. The request was declined, as sufficient opportunity had already been granted. It is also noted that the Applicant/SRA had been seeking early disposal of the IA.

5. Learned counsel for the Applicant placed reliance upon the judgment of the Hon'ble Supreme Court in ***Vaibhav Goel & Anr. v. Deputy Commissioner of Income Tax & Anr***. The learned Senior Standing Counsel appearing for the Respondent relied upon Sections 245 and 156A of the Income-tax Act, 1961, Section 36(4)(e) of the Insolvency and Bankruptcy Code, 2016, Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016 and the judgments relied upon in the Reply.

6. We have heard the learned Counsel for the Applicant and the learned Counsel for the Respondent and have perused the pleadings, documents and material available on record. Upon consideration of the rival submissions, the short question arising for determination is whether, after approval of the Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016, the Respondent could lawfully adjust the income-tax refunds of the Corporate Debtor against pre-CIRP tax demands under Section 245 of the Income-tax Act, 1961, and whether the Applicant is entitled to restoration of the amounts so adjusted.

7. Upon examination of the approved Resolution Plan, the pleadings, the documentary material placed on record and the statutory provisions governing the controversy, we find that the Resolution Plan approved on 27.09.2023 is binding on all stakeholders, including the Respondent. The rights of the parties are required to be determined strictly in accordance with the terms of the approved Resolution Plan read with Sections 31 and 238 of the Insolvency and Bankruptcy Code, 2016 and the law laid down by the Hon'ble Supreme Court. Accordingly, the issue is considered as under.

8. The controversy in the present Interlocutory Application lies within a narrow compass. The issue for determination is whether, after approval of the Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016, the Respondent could lawfully adjust the income-tax refunds due to the Corporate Debtor against the pre-CIRP tax demands by invoking Section 245 of the Income-tax Act, 1961.

9. There is no dispute that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process on 31.08.2021 and that the Resolution Plan submitted by Applicant No.2 came to be approved by this Adjudicating Authority on 27.09.2023. It has been submitted that the Income Tax Department did not file its claim for tax demands before the RP. The Applicant has submitted details of material litigations as per Information Memorandum as per which the Balance Sheet for FY 2020-2021 refers to income tax demands for FY 2010-11, 2011-12, 2016-2017. These amount of Rs 71,22,363 were shown as contingent liability as appeals were filed. There is also no dispute that the Income Tax Department participated in the CIRP proceedings during the plan approval process and had placed its outstanding demand before this Adjudicating Authority prior to approval of the Resolution Plan.

10. The Respondent adjusted refund of Rs 5,14,310 for AY 2022-23 on 04.11.2022 against the dues for AY 2012-13.

11. The Respondent adjusted the refund of Rs 7,91,650 for AY 2023-24 on 29.01.2024 against the demand for AY 2012-13.

Another refund of Rs 14,17,670 for AY 2024-2025 was also adjusted on 24.01.2025 against the demand for AY 2012-13.

12. Based on the above stated facts it is undisputed that after approval of the Resolution Plan on 27.09.2023, the Respondent adjusted refunds for Assessment Years 2023-24 and 2024-25 against outstanding demands pertaining to earlier assessment years by exercising powers under Section 245 of the Income-tax Act, 1961. The legality of these adjustments constitutes the core issue requiring adjudication.

13. Section 31(1) read with Section 238 of the Insolvency and Bankruptcy Code, 2016 provides that once a Resolution Plan is approved by the Adjudicating Authority, it becomes binding upon the Corporate Debtor, its employees, members, creditors and all statutory authorities, including the Central Government and State Government, in respect of dues arising under any law for the time being in force. The legislative intent is to ensure certainty and finality in the insolvency resolution process.

14. The Hon'ble Supreme Court in ***Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657***, has categorically held that upon approval of the Resolution Plan, all claims not forming part of the approved Resolution Plan stand extinguished and no authority can thereafter enforce such claims against the Corporate Debtor. The successful Resolution Applicant is entitled to take over the Corporate Debtor on a "clean slate", free from undecided or residual liabilities.

15. The Hon'ble Supreme Court in ***Vaibhav Goel & Anr. v. Deputy Commissioner of Income Tax & Anr***. has reiterated that statutory authorities are equally bound by the consequences flowing from an approved Resolution Plan and that the provisions of the Insolvency and Bankruptcy Code, 2016 prevail over inconsistent statutory mechanisms.

16. The Respondent has justified the impugned adjustments on the ground that the outstanding tax demands continued to remain reflected in the departmental records until orders under Section 156A of the Income-tax Act, 1961 were passed on 28.03.2025. According to the Respondent, the adjustments were automatic under Section 245 and were, therefore, legally sustainable.

17. We are unable to accept the said contention. The continuance of demand entries in the departmental records cannot override the legal consequences flowing from approval of the Resolution Plan under Section 31 of the Code. Administrative entries are merely consequential and cannot enlarge or preserve substantive rights contrary to the statutory mandate of the Insolvency and Bankruptcy Code, 2016.

18. The orders passed under Section 156A are consequential orders giving effect to the approved Resolution Plan. Once such orders reduced the outstanding demands to Nil, the Respondent cannot retain refunds adjusted contrary to the treatment provided under the Resolution Plan.

19. The Respondent has also relied upon Section 245 of the Income-tax Act, 1961 to contend that adjustment of refund is merely a statutory set-off and not a recovery prohibited under the Insolvency and Bankruptcy Code. The said contention cannot be accepted in the facts of the present case. There is no dispute that Section 245 confers statutory power of adjustment. However, exercise of such power remains subject to the overriding provisions contained in Sections 31 and 238 of the Insolvency and Bankruptcy Code.

20. The judgment in ***CIT v. Hindustan Petroleum Corporation Ltd., (2007) 291 ITR 617 (SC),*** relied upon by the Respondent, was rendered in the context of Section 245 of the Income-tax Act and does not consider the overriding effect of Sections 31 and 238 of the Insolvency and Bankruptcy Code, 2016. The said judgment is therefore distinguishable on facts.

21. Section 238 of the Insolvency and Bankruptcy Code gives overriding effect to the provisions of the Code notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, wherever exercise of powers under the Income-tax Act results in enforcement of a claim inconsistent with an approved Resolution Plan, the provisions of the Insolvency and Bankruptcy Code shall prevail. The adjustment dated

04.11.2022 also requires to be viewed in the light of Section 14 of the Code, which prohibits recovery proceedings during the moratorium period.

22. The reliance placed by the Respondent upon Section 36(4)(e) of the Insolvency and Bankruptcy Code and Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016 cannot be accepted as those provisions govern liquidation proceedings whereas the present matter concerns implementation of an approved Resolution Plan under Chapter II of Part II of the Code.

23. The Resolution Plan placed before this Adjudicating Authority specifically deals with the treatment of contingent income-tax liabilities. Clauses 2.9.8, 3.6.1 and 3.6.4 of the approved Resolution Plan specifically provide the manner in which the contingent income-tax liabilities are to be dealt with. Therefore, the entitlement of the Respondent is governed exclusively by the treatment accorded under the approved Resolution Plan. Once the Resolution Plan has attained finality, every stakeholder, including statutory authorities, is bound to act strictly in accordance with its terms. Neither the Corporate Debtor nor the Respondent can claim rights beyond what has been provided under the approved Resolution Plan.

24. We, therefore, hold that the Respondent could not have adjusted the refunds arising for AY 2023-2024 and 2024-2025 against the demands for pre-CIRP period. The Applicant is eligible for these refunds.

25. Further, the adjustment of refund for AY 2022-2023 of Rs 5,14,310 against the dues for AY 2012-13 on 04.11.2022 was done after the commencement of CIRP in the case of the corporate debtor on 31.08.2021. We hold that the dues of the period prior to the CIRP commencement date are required to be dealt based on the disbursement that would be due to the creditors in the same class as per the waterfall mechanism provided in section 53 of the Code. The Applicant has submitted that an amount of Rs 1,60,653 (paragraph 10 of the Application) was payable to the Income Tax Department based on the disbursement provided in the Resolution Plan. Therefore, we hold that the refund for AY 2022-2023 could not have been adjusted against the tax dues outstanding on the CIRP commencement date. The Respondent was eligible to retain or appropriate the refund due to the Corporate Debtor against pre-CIRP tax demands except to the extent, if any, expressly permissible under the approved Resolution Plan. Any adjustment beyond the treatment contemplated therein cannot be sustained in law.

26. The Applicant has submitted that adjustment of refunds of Rs 514310 for AY 2022-2023, Rs 7,91,650 for AY 2023-2024, and Rs 14,17,670 for AY 2024-2025 were made against the amount due of Rs 160653 based on the approved resolution plan.

27. Accordingly, the Respondent shall re-examine the adjustments made towards the refunds of the Corporate Debtor strictly in accordance with the terms of the approved Resolution Plan and the observations recorded herein. In the event any amount has been adjusted or retained in excess of the Respondent's entitlement under the approved Resolution Plan, the same shall be refunded to the Corporate Debtor together with consequential statutory benefits, if otherwise admissible in law.

28. The aforesaid exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. The Respondent shall thereafter communicate the outcome of such exercise to the Applicant forthwith.

29. In view of the foregoing discussion, **I.A. No. 1480(AHM)2025** in CP(IB) No. 385 of 2020 stands **allowed** in the aforesaid terms. No order as to costs.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)
VP

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)