IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4624 of 2022

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Bhushan Power and Steel Limiteed, a Company incorporated Under the Companies Act, 1956, and validly Existing Company Under Companies Act 2013 With Bearing CIN U27100DL1999PLCI08350, PAN AAACB9760D, BIhar GST NO. 10AAACB9760DlZ5 having its registered Office at 4th Floor, A-2, NTH Complex, Shaheed Jeet Singh Marg, USO Road, Qutab Institutional Area, New Delhi-110067, India and Major Steel Works at Village-Thelkoloi, P.O.-Lapanga Tehsil Rengali, District-Sambalpur Odisha- 768212 and Local Office at Khata no. 413, Kishanganj Road, Damka Chowk, Near Damka Chowk, Gulabbhag, Purnea, Bihar through its authorised representative Mr. Gautam Kumar Sinha, aged about 51 Years (Constituted Attorney), S/o Late (Dr.) H.K. Sinha, at Present resident of C-302, Bhushan Power and Steel Ltd Township, Village-Thelkiloi, P.O.-Lapanga, Tehsil-Rengali, District-Sambalpur, Odisha-768212.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary Cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary Cum Commissioner, Department, Government of Bihar, Patna. Commercial Taxes
3. The Joint Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.
4. The Assistant Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 4637 of 2022

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Bhushan Power and Steel Limited, a company incorporated under the Companies Act, 1956, and validly existing company under Companies Act 2013 with bearing CIN

U27100DL1999PLC108350, PAN AAACB9760D, Bihar GST No. 10AAACB9760D1Z5 having its registered office at 4th Floor, A-2, NTH Complex, Shaheed Jeet Singh Marg, USO Road, Qutab Institutional Area, New Delhi-110067, India and Major Steel works at Village-Thelkoloi, P.O.-Lapanga Tehsil-Rengali, District-Sambalpur Odisha- 768212 and local office at Khata No. 413, Kishanganj Road, Damka Chowk, Near Damka Chowk, Gulabbhag, Purnea, Bihar through its authorised representative Mr. Gautam Kumar Sinha, aged about 51 years (Constituted Attorney), S/o Late (Dr.) H.K. Sinha, at present resident of C-302, Bhushan Power and Steel Ltd. Township, Village-Thelkoloi, P.O.-Lapanga, Tehsil- Rengali, District-Sambalpur, Odisha-768212.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
3. The Joint Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.
4. The Assistant Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 4785 of 2022

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Bhushan Power and Steel Limited, a company incorporated under the Companies Act, 1956, and validly existing company under Companies Act 2013 with bearing CIN U27100DL1999PLC108350, PAN AACB9760D, Bihar GST No. 10AAACB9760D1Z5 having its registered office at 4th Floor, A-2, NTH Complex, Shaheed Jeet Singh Marg, USO Road, Qutab Institutional Area, New Delhi - 110067, India and Major Steel Works at Village - Thelkoloi, P.O. - Lapanga Tehsil - Rengali, District – Sambalpur Odisha - 768212 and local

office at Khata No. 413, Kishanganj Road, Damka Chowk, Near Damka Chowk, Gulabbhag, Purnea, Bihar through its authorised representative Mr. Gautam Kumar Sinha, aged about 51 years (Constituted Attorney), S/o Late (Dr.) H.K. Sinha, at present resident of C- 302, Bhushan Power and Steel Ltd. Township, Village - Thelkoloi, P.O. - Lapanga, Tehsil - Rengali, District - Sambalpur, Odisha - 768212.

... ... Petitioner

Versus

1. The State of Bihar, through Principal Secretary Cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary Cum Commissioner, Department, Government of Bihar, Patna.Commercial Taxes
3. The Joint Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.
4. The Assistant Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.

... ... Respondents

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Acts/Sections/Rules:

- *Sections 8 of Bihar Entry Tax Act, 1993*
- *Rule 10 of the Act of 1993*
- *Section 24(10), 31, 24(8) of Bihar Value Added Tax Act, 2005*
- *Sections 3, 7, 10, 13-25, 31 of Insolvency and Bankruptcy Code, 2016*
- *Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*
- *Regulation 37 of the CIRP Regulations*
- *Rule 65 of the Bihar Value Added Tax Rule, 2005*
- *Rule 10 of the Bihar Entry Tax Rule, 1993*
- *Bihar Goods and Services Tax Act, 2017*

Cases referred:Acts/Sections/Rules:

- *Sections 8 of Bihar Entry Tax Act, 1993*
- *Rule 10 of the Act of 1993*
- *Section 24(10), 31, 24(8) of Bihar Value Added Tax Act, 2005*
- *Sections 3, 7, 10, 13-25, 31 of Insolvency and Bankruptcy Code, 2016*
- *Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*
- *Regulation 37 of the CIRP Regulations*
- *Rule 65 of the Bihar Value Added Tax Rule, 2005*
- *Rule 10 of the Bihar Entry Tax Rule, 1993*
- *Bihar Goods and Services Tax Act, 2017*
- *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others reported in (2020) 8 SCC*
- *Ghanashyam Mishra and sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. (Supreme Court C.A. No.8129 of 2019) reported in (2021) 9 SCC 657*
- *Uttam Value Steels Limited and Another versus Assistant Commissioner of Income Tax and Others (Bombay High Court Writ Petition (L) No. 940 of 2022)*
- *Alok Industries Limited versus Assistant Commissioner of Income Tax reported in 2024 SCC Online Bom 3481*
- *Adhunik Metaliks Limited Vs. State of Orissa and Ors. decided on 08.12.2022 in Orissa High Court WP (C) No. 1553 of 2022*
- *AMNS Khopoli Limited versuActs/Sections/Rules:*
- *Sections 8 of Bihar Entry Tax Act, 1993*
- *Rule 10 of the Act of 1993*
- *Section 24(10), 31, 24(8) of Bihar Value Added Tax Act, 2005*
- *Sections 3, 7, 10, 13-25, 31 of Insolvency and Bankruptcy Code, 2016*
- *Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*
- *Regulation 37 of the CIRP Regulations*
- *Rule 65 of the Bihar Value Added Tax Rule, 2005*
- *Rule 10 of the Bihar Entry Tas Assistant Commissioner of Income Tax*

Writ petition - filed for quashing the assessment order passed by the Joint Commissioner of State Taxes whereunder it has been held that the petitioner-company is liable to pay Rs. 21,12,013/- for the financial year 2016-17 towards taxes/interest/fine/penalty.

It is a matter of record that the petitioner company was facing proceeding before the NCLT at the instance of a financial creditor of the petitioner company.

Held - The resolution plan has been approved by the Adjudicating Authority on 05.09.2019. (Para 34)

On reading of the Resolution Plan, it is evident that it takes within its fold the 'dues' under the provisions of any indirect tax laws in relation to any part prior to the effective date. A question would, thus, arise in the present case as to whether in the present case it may be said that the demand in question are the dues in relation to any part prior to the effective date. (Para 35)

Once a resolution plan is duly approved under Section 31(1) of the IBC with debts as provided for in the resolution plan alone shall remain payable and such position shall be binding on among others, the Central Government and various authorities including Tax Authorities. (Para 37)

NCLT approved the resolution plan on 05.09.2019 and the NCLAT affirmed the order of NCLT on 17.02.2020. The audit by Commercial Tax Department, Government of Bihar under the Assessment Year 2016-17 was taken up on 12.02.2020 and pursuant to the audit notice, notices were issued to the petitioner on 25.08.2020 and the assessment order impugned in the writ application had been passed on 22.12.2021. (Para 40)

The order of assessment and demand arising out of the same pertains to a period prior to the effective date, the present case would be covered by the ratio of the judgment of the Supreme Court in the case of Ghanashyam Mishra case. (Para 41)

Writ petition is allowed. (Para 42)

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4624 of 2022

==========

Bhushan Power and Steel Limiteed, a Company incorporated Under the Companies Act, 1956, and validly Existing Company Under Companies Act 2013 With Bearing CIN U27100DL1999PLCI08350, PAN AAACB9760D, BIhar GST NO. 10AAACB9760DlZ5 having its registered Office at 4th Floor, A-2, NTH Complex, Shaheed Jeet Singh Marg, USO Road, Qutab Institutional Area, New Delhi-110067, India and Major Steel Works at Village-Thelkoloi, P.O.-Lapanga Tehsil Rengali, District-Sambalpur Odisha-768212 and Local Office at Khata no. 413, Kishanganj Road, Damka Chowk, Near Damka Chowk, Gulabbhag, Purnea, Bihar through its authorised representative Mr. Gautam Kumar Sinha, aged about 51 Years (Constituted Attorney), S/o Late (Dr.) H.K. Sinha, at Present resident of C-302, Bhushan Power and Steel Ltd Township, Village-Thelkiloi, P.O.-Lapanga, Tehsil-Rengali, District-Sambalpur, Odisha-768212.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary Cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary Cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
3. The Joint Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.
4. The Assistant Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 4637 of 2022

==========

Bhushan Power and Steel Limited, a company incorporated under the Companies Act, 1956, and validly existing company under Companies Act 2013 with bearing CIN U27100DL1999PLC108350, PAN AAACB9760D, Bihar GST No. 10AAACB9760D1Z5 having its registered office at 4th Floor, A-2, NTH Complex, Shaheed Jeet Singh Marg, USO Road, Qutab Institutional Area, New Delhi-110067, India and Major Steel works at Village-Thelkoloi, P.O.-Lapanga Tehsil-Rengali, District-Sambalpur Odisha-768212 and local office at Khata No. 413, Kishanganj Road, Damka Chowk, Near Damka Chowk, Gulabbhag, Purnea, Bihar through its authorised representative Mr. Gautam Kumar Sinha, aged about 51 years (Constituted Attorney), S/o Late (Dr.) H.K. Sinha, at present resident of C-302, Bhushan Power and Steel Ltd. Township, Village-Thelkoloi, P.O.-Lapanga, Tehsil-Rengali, District-Sambalpur, Odisha-768212.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary cum Commissioner,

Commercial Taxes Department, Government of Bihar, Patna.

2. The Principal Secretary cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
3. The Joint Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.
4. The Assistant Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 4785 of 2022

==========

Bhushan Power and Steel Limited, a company incorporated under the Companies Act, 1956, and validly existing company under Companies Act 2013 with bearing CIN U27100DL1999PLC108350, PAN AACB9760D, Bihar GST No. 10AAACB9760D1Z5 having its registered office at 4th Floor, A-2, NTH Complex, Shaheed Jeet Singh Marg, USO Road, Qutab Institutional Area, New Delhi - 110067, India and Major Steel Works at Village - Thelkoloi, P.O. - Lapanga Tehsil - Rengali, District - Sambalpur Odisha - 768212 and local office at Khata No. 413, Kishanganj Road, Damka Chowk, Near Damka Chowk, Gulabbhag, Purnea, Bihar through its authorised representative Mr. Gautam Kumar Sinha, aged about 51 years (Constituted Attorney), S/o Late (Dr.) H.K. Sinha, at present resident of C-302, Bhushan Power and Steel Ltd. Township, Village - Thelkoloi, P.O. - Lapanga, Tehsil - Rengali, District - Sambalpur, Odisha - 768212.

... ... Petitioner

Versus

1. The State of Bihar, through Principal Secretary Cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary Cum Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
3. The Joint Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.
4. The Assistant Commissioner State Taxes, Commercial Taxes Department, Government of Bihar, Purnea Circle, Purnea.

... ... Respondents

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Appearance :
(In Civil Writ Jurisdiction Case No. 4624 of 2022)
For the Petitioner/s : Mr.Sunit Kumar, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC11)
(In Civil Writ Jurisdiction Case No. 4637 of 2022)
For the Petitioner/s : Mr.Sunit Kumar, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC5)
(In Civil Writ Jurisdiction Case No. 4785 of 2022)
For the Petitioner/s : Mr.Siddhartha Prasad, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC 11)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-02-2025

These three writ applications are raising common questions for consideration, hence, on the request of the parties, we have heard these writ applications together and the same are being disposed of by this common judgment.

CWJC No.4624 of 2022

2. This writ application has been preferred for quashing the assessment order dated 22.12.2021 passed by the Joint Commissioner of State Taxes, Purnea Circle, Purnea under the provisions of Bihar Entry Tax Act, 1993 (hereinafter referred to as the 'Act of 1993') read with Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'Act of 2005') whereby and whereunder it has been held that the petitioner-company is liable to pay Rs.21,12,013/- for the financial year 2016-17 towards taxes/interest/fine/penalty. The petitioner has also prayed for quashing of the demand notice dated 22.12.2021 issued under Section 25 and 39 of the Act of 2005 by the Joint Commissioner whereby and whereunder a demand of Rs. 21,12,013/- has been raised against the petitioner-company for the financial year 2016-

17 on the basis of the impugned assessment order. The petitioner-company has further prayed for quashing of the reminder notice dated 01.02.2022.

CWJC No.4637 of 2022

3. In this writ application, the petitioner has prayed for identical reliefs. The assessment order dated 20.12.2021 passed by the Joint Commissioner of State Taxes, Purnea Circle, Purnea by which the petitioner-company has been held liable to pay Rs.5,78,195/- for the financial year 2016-17 towards taxes/fine/penalty, the demand notice dated 20.12.2021 issued under Section 25 and 39 of the Act of 2005 on the basis of the impugned assessment order and reminder notice dated 01.02.2022 issued by the Assistant Commissioner of State Tax, Purnea Division, Purnea for the payment of said amount are impugned in this writ application.

CWJC No.4785 of 2022

4. In this writ application the assessment order dated 28.12.2021 passed by the Joint Commissioner of State Taxes, Purnea Circle, Purnea by which the petitioner-company has been held liable to pay a fine of Rs.44500/- for the financial year 2016-17, the demand notice dated 28.12.2021 issued by the Joint Commissioner of State Taxes, Purnea Circle, Purnea and reminder

notice dated 01.02.2022 issued by the Assistant Commissioner of State Tax, Purnea Division, Purnea are under challenge.

Brief Facts of the case

5. The petitioner-company is a Public Limited Company incorporated under the provisions of the Companies Act, 1956 having it's registered office in the Qutab Institutional Area, New Delhi, India. It is said to be a leading manufacturer of flat and long products and has state of the art plants at Chandigarh, Derabassi, Kolkata, Orissa and other parts of India. Thus plants manufacture value-added products covering the entire steel value chain right from Coal Mining to manufacturing Pig Iron, DRI, Billets, HR Coils, CR Coils, GP/GC Sheets, Precision Tubes, Black Pipe/GI Pipe, Cable Tapes, Tor Steel, Carbon and Special Alloy Steel Wire Rods and Rounds conforming to IS and international standards.

6. The respondents conducted a scrutiny of the returned filed in ET-IV. It was found that the petitioner had shown a total receipt of Rs.1901485927.00/- as the import value and payment whereas in it's return filed under the Act of 2005 the Intra-State sale and stock receipts have been shown at 1912717747.00/-. Thus, in respect of entry tax it was found that the petitioner had not correctly paid his entry tax. The petitioner was called upon to show cause but no satisfactory explanation could be furnished to

the respondent authorities. In such circumstance, the assessment order was passed and the petitioner-company has been held liable to pay Rs.9,56,35,887/- on account of entry tax which is 5% of Rs.1912757747/-. The petitioner has been further held liable to pay a fine under Section 24(10) of the Act of 2005 read with Section 8 of the Act of 1993 which has been assessed at Rs.7,94,316/- and after adjustment of the paid amount of Rs.383558/-, the balance amount of Rs.4,10,758/- has been found payable. Similarly a sum of Rs.44,500/- has been calculated as fine amount under Section 24(8) of the Act of 2005 read with Section 8 of the Act of 1993. Ultimately under Rule 10 of the Act of 1993, it has been found that the petitioner-company had not submitted form ET-X which is violation of Rule 8 of the Act of 1993. For this a sum of Rs.1000/- has been imposed as fine. In this manner, the petitioner has been held liable to pay the following amounts:-

"कर की राशि– रु 9,56,35,887 = 00
ब्याज u/s -20(10) -रु 4,10,758 = 00
fine u/s -24(8) -रु 44,500 = 00
शस्ति u/R-10 -रु 1,000 = 00

कुल भुगतेय राशि – रु 96092145 = 00
– भुगतान राशि – रु 93980132 = 00

शेष भुगतान राशि – रु 21,12,013 = 00
इस प्रकार रु 24,12,013 = 00 का माँग पत्र निर्गत करें तथा पंजी में दर्ज करें ।"

7. It appears from the averments made in the writ application(s) that after the scrutiny the assessment order was passed,

the Joint Commissioner, State Taxes, Purnea Circle, Purnea issued demand notice raising a demand of Rs.21,12,013/- (Rupees Twenty One Lakh Twelve Thousand and Thirteen) and thereafter initiated a recovery proceeding under the Act of 2005.

Submissions on behalf of the petitioner.

8. It is submitted that the demand raised by the respondents under the indirect tax is no more payable by the petitioner in view of approval of resolution plan under the provisions of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC'). It is submitted that the against the petitioner-company, an application under Section 7 of the IBC was filed by the Punjab National Bank (CA 254 of 2019) before the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter called NCLT/Adjudicating Authority) for initiating Corporate Insolvency Resolution Process (CIRP). The said application was admitted on 26.07.2017 and CIRP was initiated by appointing an Interim Resolution Professional (IRP) by the NCLT in exercise of its power under Section 16 of the IBC.

9. It is submitted that in terms of Section 17 of the IBC read with Section 25 of the IBC the management of the affairs of the petitioner-company was vested with the IRP as a going concern. Thereafter a public announcement was made on

28.07.2017 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. An invitation was sent to all the creditors of the Company to file pre-CIRP claims with proof, on or before the last date mentioned in the Public Announcement.

10. The contention of the petitioner is that no claim whatsoever was raised/filed by the respondents in respect of any of its outstanding pre-CIRP dues as is being demanded now by passing the impugned assessment order(s), demand notice(s) and reminder notice(s). It is submitted that since the resolution plan dated February 8, 2018 along with the addendum letter dated October 10, 2018 submitted by JSW Steel Ltd. for the company was approved by the Committee of Creditors (CoC) during the e-voting held on 15-16 October, 2018 and thereafter the NCLT was pleased to partially approve the resolution plan with certain conditions, even as such conditions were set aside in appeal by the NCLT vide order dated 17.02.2020 passed in Company Appeal (AT) (Insolvency) No.957 of 2019 (JSW Steel Ltd. VS. Mahender Kumar Khandelwal and others). The resolution plan has attained finality on 17.02.2020.

11. Learned counsel for the petitioner submits that in terms of the approved resolution plan all the claims and liabilities

of the petitioner-company for the period prior to effective date/approval of resolution plan has been extinguished, save and except as provided under the approved resolution plan. With respect to outstanding government dues, taxes, etc. it has been further clarified that in clause 1.6 (vii) of the proposal it is provided that all dues under the provisions of any indirect tax laws in relation to any period prior to the effective date or arising on account of the acquisition of control by resolution applicant over the company pursuant to the resolution plan shall, in accordance with Regulation 37 of the CIRP Regulations, stand extinguished by virtue of the order of the NCLT approving the resolution plan and the company shall not be liable to pay any such claim other than as specifically provided in the resolution plan. The effective date is 05.09.2019. It is submitted that according to clause 1.6 of the resolution plan, all the notices, assessments, appellate or other proceedings pending or threatened in relation to the company, in relation to any period prior to the effective date shall stand terminated and withdrawn and all the consequential liabilities if any shall, in accordance with Regulation 37 of the CIRP Regulations, stand extinguished.

12. Learned counsel for the petitioner submits that the approved resolution plan is binding on all stakeholders of the

company in terms of Section 31 of IBC. It is further submitted that the impugned assessment order dated 22.12.2021 is illegal and without jurisdiction since it has been passed by the Joint Commissioner of State Taxes, Purnea Circle, Purnea much belatedly after successful resolution by IRP and much after the new Board of Directors along with the management team have taken over the operations of petitioner-company with effect from 26.03.2021.

13. It is submitted that the Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others** reported in **(2020) 8 SCC 531** has held that "A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan 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 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."

14. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd.** (C.A. No.8129 of 2019) reported in **(2021) 9 SCC 657** in which it has been held that the successful resolution applicant cannot be flung with surprise claims which are not part of the resolution plan. It has been opined by the Hon'ble Supreme Court that in the resolution plan as approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. The Hon'ble Supreme Court found that 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.

15. In the aforementioned background, it is contended that not a single penny whatsoever in form of taxes/interest/fine/penalty under the provisions of the Act of 1993 read with the Act of 2005 for the assessment year 2016-17 is payable by the petitioner-company. It is contended that in fact from the extract of Auditor's report it may be found that the petitioner-company is eligible for some refund amount. Reliance

has also been placed upon the judgment of Hon'ble Bombay High Court in the case of **Uttam Value Steels Limited and Another versus Assistant Commissioner of Income Tax and Others (Writ Petition (L) No. 940 of 2022)** and the judgment dated 08.12.2021 passed by the Hon'ble Orissa High Court in W.P.(C) No.459 of 2015. It is contended that in exactly similar manner the Commercial Taxes Department of Orissa had issued demand notice for payment of entry tax and the petitioner-company challenged the same in the Orissa High Court. The plea of the petitioner-company has been allowed and the demand letter has been quashed by the Hon'ble High Court.

Submission on behalf of Respondents

16. A counter affidavit has been filed on behalf of the respondents. It is stated therein that the petitioner-company was selected for VAT audit by the Commercial Tax Commissioner, Bihar Patna for the financial year 2016-17 under Section 26 of the Act of 2005. A notice for audit of books of accounts was issued to the petitioner-company by the office of the Additional Commissioner of State Tax (Audit), Purnea Division, Purnea. The petitioner failed to produce the books of accounts and relevant documents for VAT Audit, thereafter the Additional Commissioner, State Tax (Audit), Purnea Division had prepared and forwarded the

final audit report under Section 22 of the Act of 2005 to the Joint Commissioner, State Tax Circle Incharge, Purnea Circle, Purnea for further necessary action.

17. It is stated that the Joint Commissioner of State Tax (respondent no.3) issued notice to the petitioner for producing the books of accounts and relevant documents for examination under Section 8 of the Act of 1993 read with Section 31, 24(8) of the Act of 2005 and Rule 65 of the Bihar Value Added Tax Rule, 2005 and Rule 10 of the Bihar Entry Tax Rule, 1993. Copy of the notice has been brought on record as Annexure-C, D and E of the counter affidavit. Perusal of the same would show that these notices were issued to the petitioner-company on 21.09.2020.

18. It is further submitted that Sri Abhishek Kumar Tiwary presented the books and account, statutory forms and other relevant documents for examination of the facts in the compliance of served notices. After proper examination of the books and account, the petitioner was served with a demand notice of Rs.2112013.00 under Section 31, 24(8) of the Act of 2005 read with Rule 65 of the Bihar Value Added Tax Rule, 2005 and under Rule 10 of the Bihar Entry Tax Rule, 1993. The Respondent no.3 found from the books of accounts produced by the petitioner that Interstate Purchase/Receipt declared in Annual Return filed under

the Act of 2005 was less than the declared Interstate Purchase/Receipt in his books of account. It was found that the sales or purchases of goods liable to tax under the Act of 1993 has been under-assessed by the petitioner-company. The petitioner-company had not paid the admitted entry tax payable by him and not filed annual return so fine and interest has been imposed upon the petitioner-company. The petitioner has not filed his entry tax reconciliation statement in form ET-X so excess tax paid in the month of March, 2016 not computed in the assessment order passed by respondent no.3.

19. It is submitted that the petitioner had got itself registered under Bihar Goods and Services Tax Act, 2017 (BGST) upon migration from the Act of 2005. The principal place of business and trade name bears the same as it is registered in the Act of 2005 and the petitioner is still doing business in the Trade Name of M/s Bhushan Power and Steel Ltd. The irony is that the petitioner is still using the "Goodwill" of same trade name even today. Referring to Section 63 of the Act of 2005, it is submitted that it provides liability to pay tax in case of transfer of business. It is submitted that when the ownership of the business of a dealer liable to pay tax under this Act is entirely transferred, the transferor and the transferee shall jointly and severally be liable to

pay any tax, interest and penalty if any payable in respect of such business and remaining unpaid at the time of transfer.

20. As regards the applicability of IBC, it is submitted that there is no liability of payment of taxes, interest, fine and penalty on the part of the petitioner-company as it is pre corporate insolvency resolution process. The first notice has been served upon the petitioner by the office of Additional Commissioner of State Tax (Audit), Purnea Division on 18.09.2018 to produce books of accounts for VAT audit. The petitioner-company submitted resolution plan on 10.10.2018 and NCLT approved the resolution plan submitted by JSW Steel Ltd. on 05.09.2019. On 17.02.2020, the NCLAT passed the order.

21. There is no rejoinder on behalf of the petitioner to the counter affidavit of the respondents.

22. Since, the other two writ applications contained identical kind of pleadings on behalf of the parties, we are not reiterating the same.

Consideration

23. We have heard learned counsel for the petitioner and learned counsel for the State-respondents. It is a matter of record that the petitioner company was facing proceeding before the NCLT at the instance of Punjab National Bank, a financial creditor of the petitioner

company. The IBC has come into existence vide Act No. 31 of 2016 dated 28.05.2016. The preamble of the IBC reads as under:-

> "An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."

24. Section 3 of the IBC is the definitions Section which defines "debt". Under clause (11) of Section 3. "Debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. Section 7 lays down the procedure for initiation of corporate insolvency resolution process against by a financial creditor either by itself or jointly. Section 10 talks of initiation of corporate insolvency resolution process by a a corporate applicant.

25. Section 13 provides for Declaration of moratorium and public announcement. Section Section 13 and 14 of IBC are being reproduced hereinbelow for a ready reference:-

> "**13. Declaration of moratorium and public announcement**
> (1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order—
> (a) declare a moratorium for the purposes referred to in section 14;
> (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and

(c) appoint an interim resolution professional in the manner as laid down in section 16.

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.

14. Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(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 (54 of 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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[1][(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

[2][(3) The provisions of sub-section (1) shall not apply to –

[3][(a) such transactions, agreement or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

1. Inserted by Act 1 of 2020, S. 5 (w.r.e.f. 28-12-2019).
2. Substituted by Act 26 of 2018, S. 10, for sub-S. (3) (w.r.e.f. 6-6-2018).
3. Substituted by Act 1 of 2020, S. 5, for Cl. (a) (w.r.e.f. 28-12-2019).

> (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:
> Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

26. Section 15 provides that there shall be public announcement of the corporate insolvency resolution process under the order referred to in Section 13 contain the following information, namely, –

> a) name and address of the corporate debtor under the corporate insolvency resolution process;
> (b) name of the authority with which the corporate debtor is incorporated or registered;
> (c) the last date for submission of [4][claims, as may be specified];
> (d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;
> (e) penalties for false or misleading claims; and
> (f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.
> (2) The public announcement under this section shall be made in such manner as may be specified.

27. Under the scheme of the IBC, the Adjudicating Authority has power under Section 16 to appoint any interim resolution professional within fourteen days. Under Section 17 the management of affairs of corporate debtor by interim resolution professional from the

date of appointment of the interim resolution professional and the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional. The management of affairs of corporate debtor shall vest with the interim resolution professional and he shall exercise the following powers –

> a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;
> (b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;
> (c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;
> (d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

28. For this purpose, certain powers have been vested with the interim resolution professional under Sub-Section (2) of Section 20.

29. Section 21 talks of Committee of creditors. According to Sub-Section (1), the interim resolution professional shall after collation of all claims received against the corporate debtor and determination of financial position of the corporate debtor, constitute a committee of creditors. Sub-Section (2) provides that the committee of creditors shall comprise all financial creditors of the corporate debtor.

30. Then comes Section 22 which provides appointment of resolution professional. Under Section 23 resolution professional to conduct corporate insolvency resolution process and Section 24 provides for meeting of committee of creditors. Section 25 of the IBC provides duties of resolution professional. The resolution professional has to undertake the actions such as provided under Sub-Section (2) of Section 25.

31. Section 28(1) states that notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:

> (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
> (b) create any security interest over the assets of the corporate debtor;
> (c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
> (d) record any change in the ownership interest of the corporate debtor;
> (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
> (f) undertake any related party transaction;
> (g) amend any constitutional documents of the corporate debtor;
> (h) delegate its authority to any other person;
> (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
> (j) make any change in the management of the corporate debtor or its subsidiary;

(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.
(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).
(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of [1][sixty-six] percent of the voting shares.
(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.
(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this Code.

32. Sections 30 and 31 provides for submission and approval of resolution plan. Both Sections are being quoted hereunder:-

"**30. Submission of Resolution Plan. –** (1) A resolution applicant may submit a resolution plan [1][along with an affidavit stating that he is eligible under section 29-A] to the resolution professional prepared on the basis of the information memorandum.
(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –
(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [2][payment] of other debts of the corporate debtor;
[3][(b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than –
(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

1. Substituted by Act 26 of 2018, S. 21, for "seventy-five" (w.r.e.f. 6-6-2018).
1. Inserted by Act 26 of 2018, S. 23 (w.r.e.f. 6-6-2018).
2. Substituted by Act 26 of 2018, S. 23, for "repayment" (w.r.e.f. 6-6-2018).

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

[2][(4) The committee of creditors may approve a resolution plan by a vote of not less than [3][sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, [4][the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29-A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29-A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29-A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section:]

[1][Provided also that the eligibility criteria in section 29-A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution application who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018).]

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2. Substituted by Act 8 of 2018, S. 6, for sub-S. (4) (w.r.e.f. 23-11-2017).

3. Substituted by Act 26 of 2018, S. 23, for “seventy-five” (w.r.e.f. 6-6-2018).

4. Inserted by Act 26 of 2019, S. 6(b) (w.e.f. 16-8-2019).

1. Inserted by Act 26 of 2018, S. 23 (w.r.e.f. 6-6-2018).

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

31. Approval of Resolution Plan. – (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [2][including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan:

[3][Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

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

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

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

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

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

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]"

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2. Inserted by Act 26 of 2019, S. 7 (w.e.f. 16-8-2019)
3. Inserted by Act 26 of 2018, S. 24 (w.r.e.f. 6-6-2018).
1. Inserted by Act 26 of 2018, S. 24 (w.r.e.f. 6-6-2018)

33. It is evident from Section 31 of the IBC that a resolution plan submitted under Section 30 has to be approved by the Adjudicating Authority and then the same shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

34. In the present case, the resolution plan has been approved by the Adjudicating Authority on 05.09.2019. In paragraph '16' of the writ application, the petitioner has quoted clause 1.6 (vii) of the Resolution Plan (Part B) which is with respect to the outstanding Government dues, tax etc. The same is being reproduced hereunder:-

> "1.6 Outstanding Govt. Dues, taxes, etc..
> ……
> ……
> vii. Further, specifically, all dues under the provisions of any indirect tax laws, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), the Customs Act, 1962, Value Added Tax Act, 2005, the CENVAT Credit Rules, 2004, the Electricity Act, 2003, the Goods and Services Tax Act, 2017 (each as amended from time to time and including the rules made thereunder) including entry taxes, electricity duty, cross subsidy on electricity duty, sales tax deferral liabilities, duties, penalties, interest, fines, cesses, charges, unpaid tax deducted at source or tax collected at source. Octroi tax, stamp duty, local body tax, municipal taxes, or other fiscal incentives (including without limitation, the tax dues in relation to the cases set out in Annexure 4 (Details of Company Litigation)) whether admitted or not. due or contingent, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of

> Creditors, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date, or arising on account of the acquisition of control by Resolution Applicant over the Company pursuant to this Resolution Plan, shall, in accordance with Regulation 37 of the CIRP Regulations, stand extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company shall not be liable to pay any such claim other than as specifically provided in this Resolution Plan. All notices, assessments, appellate or other proceedings pending or threatened in relation to the Company, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by Resolution Applicant over the Company pursuant to this Resolution Plan, or on account of the measures contemplated under this Resolution Plan shall stand terminated and withdrawn and all consequential liabilities, if any, shall, in accordance with Regulation 37 of the CIRP Regulations, stand extinguished and be considered as not payable by the Company by virtue of the order of the NCLT approving this Resolution Plan and any re-assessment, revision or other proceedings under the provisions of an indirect tax law would be deemed to be barred in relation to any period prior to the Effective Date, by virtue of the order of the NCLT approving this Resolution Plan and the Company, the Resolution Applicant. HoldCo and the SPV shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto." (Emphasis added by the deponent)”

35. On reading of clause 1.6 (vii) of the Resolution Plan, it is evident that it takes within its fold the ‘dues’ under the provisions of any indirect tax laws in relation to any part prior to the effective date. A question would, thus, arise in the present case as to whether in the present case it may be said that the demand in question are the dues in relation to any part prior to the effective date. The effective date as submitted by learned counsel for the petitioner would be 05.09.2019 i.e.

the date the Adjudicating Authority was pleased to approve the Resolution Plan with certain conditions.

36. In the case of **Ghanashyam Mishra and Sons Private Limited** (supra), the Hon'ble Supreme Court has considered the effect of approval of resolution plan under Section 31 of the IBC. Paragraphs '64', '65', '68', '84', '95', '96', '97', '98' and '102' of the said judgment are being extracted hereunder for a ready reference:-

> "**64.** It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by adjudicating authority is limited to the extent provided under Section 31 of the I&B Code and of the appellate authority is limited to the extent provided under sub-section (3) of Section 61 of the I&B Code, is no more res integra.
> **65.** Bare reading of Section 31 of the I&B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern.
> **68.** All these details are required to be contained in the information memorandum so that the resolution applicant is aware as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the corporate debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction, that

the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approved.

84. It is clear that the mischief which was noticed prior to amendment of Section 31 of the I&B Code was that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by NCLT; on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position that once such a resolution plan was approved by the adjudicating authority, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.

95. There is another reason which persuades us to take the said view. Clause (10) of Section 3 of the I&B Code defines "creditor" thus:

"**3. (10)** "**creditor**" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;"

96. Clauses (20) and (21) of Section 5 of the I&B Code define "operational creditor" and "operational debt" respectively as such:

"**5. (20)** "**operational creditor**" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "**operational debt**" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment

of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

97. "Creditor" therefore has been defined to mean "any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder". "Operational creditor" has been defined to mean a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. "Operational debt" has been defined to mean a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

98. It is a cardinal principle of law that a statute has to be read as a whole. Harmonious construction of clause (10) of Section 3 of the I&B Code read with clauses (20) and (21) of Section 5 thereof would reveal that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority would come within the ambit of "operational debt". The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of "operational creditor" as defined under clause (20) of Section 5 of the I&B Code. Consequently, a person to whom a debt is owed would be covered by the definition of "creditor" as defined under clause (10) of Section 3 of the I&B Code. As such, even without the 2019 Amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term "creditor" and in any case, by the term "other stakeholders" as provided in sub-section (1) of Section 31 of the I&B Code.

> **102.** In the result, we answer the questions framed by us as under:
>
> **102.1.** That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.
>
> **102.2.** The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.
>
> **102.3.** Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

37. The Hon'ble Division Bench of the Bombay High Court has in its judgment dated August 28, 2024 in Writ Petition (L) No. 940 of 2022 (**Uttam Value Steels Limited and Another versus Assistant Commissioner of Income Tax and Others**) taken a view that once a resolution plan is duly approved under Section 31(1) of the IBC with debts as provided for in the resolution plan alone shall remain payable and such position

shall be binding on among others, the Central Government and various authorities including Tax Authorities. It has been observed that "all dues which are not part of the resolution plan would stand extinguished and no person would be entitled to initiate or continue any proceeding in respect of any claim for any such dues. No proceeding in respect of any dues relating to the period prior to the approval of the resolution plan can be continued or initiated.

38. The Hon'ble Bombay High Court referred its own judgment in case of **Alok Industries Limited versus Assistant Commissioner of Income Tax** reported in **2024 SCC Online Bom 3481 and AMNS Khopoli Limited versus Assistant Commissioner of Income Tax** (supra) to take a view that since the resolution plan expressly provides that no person shall be entitled to initiate any proceeding or inquiry, assessment enforce any claim or continue any proceeding in relation to claim so long such resolution to a period prior to the effective date of the resolution plan i.e. 10th November, 2022 impugned notices are bad in law.

39. In the case of **Adhunik Metaliks Limited Vs. State of Orissa and Ors.** decided on 08.12.2022 in WP (C) No. 1553 of 2022**,** the Hon'ble Orissa High Court examined the validity of the

demands raised against the petitioner for the periods prior to the period during which the proceedings were pending vis-a-vis the petitioner before the NCLT under the IBC. The Hon'ble Division Bench relied upon the judgment of the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited** (supra), quoted paragraphs '93' to '98' of the said judgment and held that the resolution plan was made effective on 03rd March, 2020 with the orders of the NCLAT by which resolution plan was made effective. In such circumstance, the demands raised against the petitioner for the periods prior to the period during which the proceedings were pending would be liable to be quashed.

40. In the present case, we find that NCLT approved the resolution plan on 05.09.2019 and the NCLAT affirmed the order of NCLT on 17.02.2020. The audit by Commercial Tax Department, Government of Bihar under the Assessment Year 2016-17 was taken up on 12.02.2020 and pursuant to the audit notice, notices were issued to the petitioner on 25.08.2020 and the assessment order impugned in the writ application had been passed on 22.12.2021.

41. Having gone through the judgments of the Hon'ble Supreme Court and that of the Hon'ble Bombay High Court and Hon'ble Orissa High Court and taking into consideration the facts the present case wherein it is apparent that the order of assessment and demand arising out of the same pertains to a period prior to the

effective date, we are of the considered opinion that the present case would be covered by the ratio of the judgment of the Hon'ble Supreme Court in the case of **Ghanashyam Mishra** (supra). We find ourselves in agreement with the judgment of the Hon'ble Bombay High Court and the Hon'ble Orissa High Court. Accordingly, the impugned order of assessment dated 22.12.2021 and demand notice dated 22.12.2021 as contained in Annexure-1 and 2 respectively in CWJC No.4624 of 2022, the impugned order of assessment dated 20.12.2021 and demand notice dated 20.12.2021 as contained in Annexure-1 and 2 in CWJC No.4637 of 2022 and impugned order of assessment dated 28.12.2021 and demand notice dated 28.12.2021 as contained in Annexure-1 and 2 respectively in CWJC No.4785 of 2022 are hereby quashed.

42. In result, these writ applications stand allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	04.02.2025
Uploading Date	27.02.2025
Transmission Date	