



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.303
IA 497 of 2020 in CP(IB) 116 of 2017

Proceedings under Section 42 IBC

IN THE MATTER OF:

State Tax Officer-3

.....Applicant

V/s

OFB Tech Private Limited Through Authorized signatory
Mr. Shailesh Tiwari & Anr

.....Respondent

Order delivered on: 06/02/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed before pronouncement of order.

The order is pronounced in open court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AT AHMEDABAD BENCH (COURT- II)**

**IA No. 497 of 2020
IN
CP (IB) No. 116 of 2017**

[Under Section 42 of the Insolvency & Bankruptcy Code, 2016]

State Tax Officer-3
Office of Assistant Commissioner of
State Tax Unit-9, B Block, 10th Floor,
M.S. Building, Lal Darwaja
Ahmedabad, Gujarat

... Applicant

Versus

1. Mr. Alok Kailash Saksena
Liquidator Of Gujarat Foils Limited
C/o Desai Saksena and Associates,
Laxmi Building, 1st Floor,
Sir P.M. Road, Fort,
Mumbai-400 001
2. Gujarat Foils Limited
3436-3449, Chhatral GIDC,
Phase IV, Taluka-Kalol,
District Gandhinagar,
Gujarat-308001
3. OFB Tech Private Limited
Through its authorized signatory
Mr. Shailendra Tiwari
Having office at
Shop no G-22C (UGF),
D-1 (K-84) Green Park Main,
New Delhi-110016

... Respondents

Order pronounced on 06.02.2026

Sd/-

Sd/-



Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

DR. VELAMUR G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant : Ms. Ritu Guru, Adv.
For Respondent no.1 : Mr. Nipun Singhvi, Adv. a.w.
Mr. Mayur Jugtawat, Adv.
For Respondent no.3 : Ms. Shreya Kumar, Adv. a.w.
Mr. Sarwar Raza, Adv.

JUDGMENT

1. This application has been filed under Section 42 of the Insolvency & Bankruptcy Code, 2016 ("IBC, 2016/the Code") by the State Tax Officer inter alia seeking prayer to direct Respondent no. 1 to admit the claim of the applicant or part thereof.
2. The applicant stated that the liquidator has rejected the claim of the applicant. Such rejection has been communicated by letter dated 05.03.2020. The said letter along with documents, as sent by the liquidator by post, has been received in the office of the applicant on 10.03.2020. The Hon'ble Supreme Court to obviate the difficulty faced by litigants in filing the

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applications/appeals within the period of limitation on account of outbreak of COVID-19 Coronavirus has passed an order on 23.03.2020 in Suo Moto Writ Petition (Civil) No. 3 of 2020 declaring that “period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s”. Considering the date of receipt of communication of rejection of claim and order dated 23.03.2020, the period of limitation for filing the present appeal has not expired.

3. The applicant stated that vide order dated 30.11.2017 CIRP was initiated and Respondent no. 1 was appointed as IRP. On 01.12.2017, IRP issued a public announcement declaring initiation of CIRP against the Corporate Debtor and invited claims from creditors. Subsequently, resolution plan submitted by Maximus International General Trading LLC was placed before the CoC. However, as it was not approved by requisite majority, it stood rejected. Consequently, on 16.09.2019, liquidation order was passed and Respondent no. 1 was appointed as liquidator. On 26.09.2019, respondent no. 1

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made a public announcement, inviting claims from stakeholders.

4. It is stated that the applicant submitted its proof of claim to respondent no.1 on 22.10.2019 for an amount of Rs.211,87,13,182/- pertaining to tax liability for the assessment years 2006-2007 to 2017-2018 (first quarter only) within the prescribed timeline. On 16.11.2019 and 03.12.2019, the applicant wrote to respondent no. 1 to know the status of its claim. However, no response was received from the liquidator. On 05.03.2020 the liquidator communicated to the applicant that the claims of the department cannot be admitted as the debt is disputed. It was stated in the communication that appeals against the assessment orders, which form the basis of the claim of the department, are pending before different appellate authorities.

5. The applicant has therefore preferred this appeal as the liquidator has committed error in rejecting the entire claim of the department on the ground that the entire claim is disputed. The conclusion arrived at by the liquidator that the entire debt, based on assessment orders for different assessment years, is

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not liable to be admitted on the ground of pendency of proceedings before the appellate authorities for each assessment years is erroneous. The liquidator has rejected the claim for assessment year 2011-12 on ground of pendency of appeal before the Value Added Tax Tribunal. The applicant submits that no appeal was pending on the date of submission of claim by the department, and as a necessary consequence no appeal was pending on the date of rejection of claim by the liquidator. Claim for the assessment years 2012-13 to 2017-18 was rejected on the ground that appeals challenging assessment are pending before the Deputy Commissioner (Appeals). The applicant stated that mere filing or lodgement of appeal with the registry or administrative office of the appellate authority cannot be considered or equated with pendency of appeal rendering the order in appeal subjudice. In absence of payment of tax liability assessed by the department or a judicial order for waiver to deposit such tax amount as a precondition to entertainment of appeal it cannot be said in law that the assessment order is sub-judice.

6. The applicant further stated that if the claim of the applicant is considered to be disputed or uncrystallized or not precise due

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to any contingency or other reason, as per Regulation 25 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, it was the duty of respondent no. 1 to make the best estimate of the amount of claim based on the information available with him. The liquidator has not even assigned a notional value to the claim of the applicant and has rejected the claim. The liquidator has replied belatedly and he does not have the power to adjudicate claims and his role is restricted to collation of claims. The applicant stated that its claim has been wrongly rejected by the liquidator.

7. Respondent no.1 has filed its reply. By way of the same it is stated that the Sales Tax officer has field this application for admitting the claim of the Department for various years from Financial Years 2007-08 to 2017-18 (first Quarter) as per details given below:

Year		Tax (in lakhs)	Interest (in lakhs)	Penalty (in lakhs)	Recovery (in lakhs)	Claim (in lakhs)
2007-08	VAT	24.13	21.72	36.19	10.00	72.04
	CST	9.69	0	0	1.50	8.19
2008-09	VAT	17.39	15.65	2.61	7.50	51.63
	CST	12.38	0	0	5.00	7.38
2009-10	VAT	41.35	29.77	62.02	15.00	118.14

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	CST	194.55	0	0	25.00	169.55
2010-11	VAT	107.30	77.25	21.46	20.00	186.02
	CST	156.87	0	0	30.00	126.87
2011-12	VAT	109.17	76.97	21.83	0	207.97
	CST	31.00	0	0	10.00	21.00
2012-13	VAT	128.22	92.32	128.22	0	348.77
	CST	26.19	18.86	6.55	0	51.60
2013-14	VAT	179.18	129.01	179.18	0	487.38
	CST	19.31	0	0	0	19.32
2014-15	VAT	372.11	206.99	375.07	122.17	832.00
	CST	2098.12	1581.32	2887.20	173.32	6393.33
2015-16	VAT	425.90	217.65	511.14	85.13	1069.56
	CST	1663.06	975.20	2294.89	133.13	4800.02
2016-17	VAT	330.74	147.01	4.83	8.84	951.76
	CST	1435.15	698.77	2294.10	47.13	4380.90
2017-18	VAT	70.37	18.81	96.70	5.91	179.98
	CST	208.77	57.76	313.16	0	579.70
TOTAL		7660.99	4365.08	9736.69	575.64	21187.13

8. Respondent no.1 stated that the claim of the applicant has been rightly rejected after considering all the facts including the various appeals pending for each of the years for which claim submitted and the stay (on recovery) granted by the Tribunal and the nature of claim. The Corporate Debtor under liquidation is a going concern and is fully tax compliant and pays all its Taxes on a regular and timely basis. I state that all

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these claims pertain to the period prior to the commencement of CIRP on 30.11.2017 and also prior to the commencement of liquidation on 16.09.2019.

9. Respondent no.1 stated that the claim of A Y 2007-08 and the subsequent years is based on the interpretation of the Sales Tax department that one of the manufactured products i.e. Aluminium Foils attract 12.5%/15% duty under entry 87 of Schedule II of the VAT Act rather than 4%/5% duty under entry 52 of the Schedule II of the VAT act as charged by the Corporate Debtor. It is further stated that the corporate debtor and all other units in the same industry have charged 4%/5% and therefore CD has disputed the claim of the Sales Tax department. Other CST claim of the sales tax department is based on disallowing the claim of goods return of goods sold against Form H & Interest u/s42 (6) read with Section 9(2) of the Central Act and non- submission of C forms. Their claim also includes an exorbitant amount of interest & penalty as seen in the table above.

10. Respondent no.1 stated that the claim in Form C received in liquidation suffers from non-disclosures and incorrect

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disclosures. In point 5 of the said Form C the applicant was required to disclose “details of any dispute as well as the record of pendency of suit or arbitration”. The Applicant has mentioned “all documents attached herewith”. In fact, no documents of the disputes at various Forums are disclosed. The Department is fully aware of all the forums in which the disputes are being litigated. Liquidator has relied upon email received from the department on 13.07.2020 which shows that the department is aware of the appeals.

11. Respondent no.1 stated that the claim made by the applicant for the Tax Period 2014-15,2015- 16,2016-17,2017-18 (first Quarter) of a Huge Amount of Rs 19,187.25 lakhs (out of the Total claim of Rs. 21,187.13 lakhs) is based on orders passed on 19.10.2019 and the claim in Form C is made on 22.10.2019. The claim is made on the basis that the demand made is unpaid, the Statute grants 35 days’ time [due date of payment 27.11.2019] to make the payment and this also finds mention in the Notice of Demand. Therefore, the claim in Form C could not have been made as there is no default on the date of which Claim is filed.

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12. Respondent no.1 has separately dealt with each tax period from the year 2007- 08 to the year 2017-18 which is as under:

a) Tax Period 2007-08

It is stated that for the Tax period 2007-08 there was a VAT demand of Rs.82,03,860/- (inclusive of interest and penalty amount) arising out of differential levy with Department claiming a levy of 12.5% under entry 87 of Schedule II of the VAT Act whereas CD levying under 4% under entry 52 of the Schedule II of the VAT Act. The CD filed appeals before the lower authorities and the VAT Tribunal. The VAT Tribunal vide order dated 18.10.2013 granted a stay on recovery on deposit of Rs. 10 lakhs which was paid. Further, for the Tax period 2007-08 there was a CST demand of Rs.9,69,463/- (inclusive of interest and penalty amount) mainly arising out of disallowing of claim on account of return of goods sold against Form H. The CD filed appeals before the lower authorities and the VAT Tribunal. The VAT Tribunal vide order dated 18.10.2013 granted a stay on recovery on deposit of Rs.1,50,000 which was paid. Vide common order dated 17.04.2015 for Tax period 2007-08 to 2009-10 set aside the order of the first appellate authority and remanded

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back the matter to First appellate authority to decide the matter on merits. The appeal is still pending before the First Appellate authority.

b) Tax Period 2008-09

It is stated that for the Tax period 2008-09 there was a VAT demand of Rs.51,63,351/- (inclusive of interest and penalty amount) arising out of differential levy. The CD filed appeals before the lower authorities and the VAT Tribunal. The VAT Tribunal vide order 27.02.2015 granted a stay on recovery on deposit of Rs.7.5 lakhs which was paid. Further, for the Tax period 2008-09 there was a CST demand of Rs.7,37,950/- (inclusive of interest and penalty amount) mainly arising out of non-production of requisite Form C and Form F. The CD filed appeals before the lower authorities and the VAT Tribunal. The VAT Tribunal vide order dated 27.02.2015 granted a stay on recovery on deposit of Rs. 5 lakhs which was paid. Vide common order dated 17.04.2015, for Tax period 2007-08 to 2009-10, set aside the order of the first appellate authority and remanded back the matter to First appellate authority to decide the

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matter on merits. The Appeal is still pending before the First Appellate authority.

c) Tax Period 2009-10

It is stated that for the Tax period 2009-10 there was a VAT demand of Rs.1,18,14,150/- (inclusive of interest and penalty amount) arising out of differential levy. The CD filed appeals before the lower authorities and the VAT Tribunal. The VAT tribunal vide order dated 27.02.2015 granted a stay on recovery on deposit of Rs 15 lakhs which was paid. Further, for the Tax period 2009-10 there was a CST demand of Rs.1,69,55,017/- (inclusive of interest and penalty amount) mainly arising out of non-production of requisite Form C and Form F. The CD filed appeals before the lower authorities and the VAT Tribunal. The VAT tribunal vide order dated 27.02.2015 granted a stay on recovery on deposit of Rs. 25 lakhs which was paid. Vide common order dated 17.04.2015, for Tax period 2007-08 to 2009-10, set aside the order of the first appellate authority and remanded back the matter to First appellate authority to decide the matter on merits. The Appeal is still pending before the First Appellate Authority.

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d) Tax Period 2010-11

It is stated that for the Tax period 2010-11 there was a VAT demand of Rs.1,86,02,159/- (inclusive of interest and penalty amount) arising out of differential levy. The CDs appeal before the second appellate authority is still pending disposal. The Tribunal vide its order dated 14.07.2016 granted a stay on recovery on deposit of Rs. 20 lakhs which was paid. Further, for the Tax period 2010-11 there was a CST demand of Rs.1,26,87,276/- (inclusive of interest and penalty amount) mainly arising out of mainly arising out of non-production of requisite Form C. The CDs appeals before the second appellate authority is still pending disposal. The Tribunal vide its order dated 14.07.2015 granted a stay on recovery on deposit of Rs. 30 lakhs which was paid.

e) Tax Period 2011-12

It is stated that for the Tax period 2011-12 there was a VAT demand of Rs.2,07,97,307/- (inclusive of interest and penalty amount) arising out of differential levy. The CD filed appeals before the second appellate authorities is still pending disposal. Further, for the Tax period 2011-12 there was a CST demand of Rs.20,99,955/- (inclusive of interest

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and penalty amount) mainly arising out of non-production of requisite Form C. The CD filed appeals before the lower authorities which is still pending disposal. The VAT Tribunal vide order dated 18.10.2016 granted a stay on recovery on deposit of Rs. 10 lakhs against both VAT and CST appeal which was paid.

f) Tax Period 2012-13 and Tax Period 2013-14

It is stated that for the Tax period 2012-13 and tax period 2013-14 there was a VAT demand of Rs.3,48,76,808/- and Rs. 4,87,37637 respectively (inclusive of interest and penalty amount) arising out of differential levy. The CD has filed first appeal before the Deputy Commissioner of Commercial Tax which is pending before the said authority. Further, for the Tax period 2012-13 and tax period 2013-14 there was a CST demand of Rs.51,60,361/- and Rs.19,31,636/- respectively (inclusive of interest and penalty amount) mainly arising out of non-production of Form C, Form F and wrongly considering local SEZ sales as interstate sales. It is stated that the orders for Tax period 2012-13 was passed on 24.03.2017 which was prior to the Moratorium under Section 14 and for the Tax period 2013-

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14 was passed on 28.03.2018 which was during the CIRP when the Moratorium was prevailing.

g) Tax Period 2014-15 to Tax Period 2017-18

It is stated that for the tax period from 2014-15 to tax period 2017-18, a huge Tax demand of Rs 19187.26 Lacs covering VAT and CST demand, Interest and Penalty based on ex-parte orders. The VAT demand of Tax Period 2014 -15 inclusive of Interest and penalty is Rs 832.01 lacs; VAT demand of Tax period 2015-16. inclusive of interest and penalty is Rs.1069.56 lacs; VAT demand of the period 2016-17 inclusive of interest and Penalty is Rs. 951.76 lacs; VAT demand for the period 2107-18 (first quarter) is Rs 179.98 lacs. The Demand for all these years is the differential levy based on the assumption that the CD had charged 5% on the sale of aluminium foils as it falls under Article 52 of the VAT Act instead of 15% as it falls under Article 82 of the VAT Act as claimed by the department. The issues are similar to the issues in earlier Tax period 2007-08 to 2013-14. The CD has filed appeal before the First Appellate authorities and the same is pending.

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Further, the CST demand of Tax Period 20 1 4 -15 inclusive of Interest and penalty is Rs 6393.33lacs; CST demand of Tax period 2015-16 inclusive of interest and penalty is Rs 4800.02 Lacs; CST demand of the period 2016-17 inclusive of interest and Penalty is Rs. 4380.89 lacs; CST demand for the period 2107-18 (first quarter) is Rs 579.70lacs. These huge demands are based on Ex-Parte orders is on complete disallowance of Outside Gujarat state (OGS) sales, Branch Transfers (BT) sales, Export Sales and Sales against F forms. Similar disallowances against non-submission of C forms and F forms are also made in earlier years 2007-08 to 2013-14. The CD has filed appeal before the First Appellate authorities and the same is pending. It is stated that the demands for the Tax period 2014-15 to 2017-18 have been made by the department on the basis of ex-parte assessment orders passed on 19.10.2019 which is just before submitting their claim in Form C on 22.10.2019 and before 35 days' time as due date. Therefore, no default and the claim is rightly rejected.

13. The liquidator stated that he has followed the provisions of the IBC 2016 and the IBBI (Liquidation Process) Regulation 2016.

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The delay in rejection was due to the incomplete Form C submitted by the Sales tax Department by not attaching the Orders on the basis on which the claim is made and only notices of Demand were attached. It is further stated that it took considerable time in getting the orders of 2014-15 to 2017-18 (First quarter) and the Sales Tax Consultant had to apply for duplicate Orders due to non-receipt of the original order. The liquidator has denied the contents and prayed to reject this application.

14. In compliance of order dated 18.02.2021, the liquidator has also filed an additional affidavit on 13.07.2021 to place on record subsequent development in this matter. By way of the same, the liquidator has placed details of pending appeals which is filed in respect of different assessment years. A summary of status of all the proceedings has been produced including details regarding stay orders, first appeal and second appeal.

15. In compliance of order dated 14.06.2023, the applicant has filed similar affidavits dated 02.02.2024 and 06.02.2024 whereby details regarding status of pending appeals is

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produced on record. It is stated that the appeals which were pending before different appellate authorities are been disposed-off except one case for the year 2011-12, which is been remanded back by the Tribunal to the First Appellate authority for producing documents by the corporate debtor. Till today the corporate debtor has not remained present before the authorities and is trying to delay the procedure. In view of the pendency of the appeal the authority has not passed any orders. Additionally, the applicant has also sought status of secured creditor by relying upon the judgment passed by the Hon'ble Supreme Court in State Tax Officer v. Rainbow Papers Limited.

16. In compliance of order dated 04.12.2024, the applicant has amended the cause title and has added the Successful bidder of corporate debtor M/s. OFB Tech Private Limited as Respondent no.3.

17. Respondent no. 3 has filed its reply dated 05.03.2025. By way of the same it is stated that the respondent is a purchaser through e- auction process convened by the liquidator. The Respondent purchased the Corporate Debtor in terms of

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Agreement for Sale and Certificate of Sale both dated 11.01.2022. on an “as is where is basis”, “as is what is basis”, “whatever there is basis” and “no recourse basis”. It is state that I.A. 53 of 2022 was filed by the respondent for seeking certain reliefs and concessions which was allowed by this Tribunal vide order dated 01.02.2023. The respondent has reproduced paragraph 4 of the order which is as under:

Sl. No.	Relief / Concession Sought For	Orders Thereon
4.	a. Extinguishment of all previous claims by private parties and/ or Government Departments, etc. prior to the transfer date. b. Disposal of all pending civil and criminal liquidations/ Inquiries/ Complaints assessments, etc. against the corporate debtor pending against the corporate debtor prior to the transfer date (Annexure H).	Granted in terms of the Judgement of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. (Civil Appeal No. 8129 of 2019)

18. Respondent no.3 further stated that it should be ensured a clean slate and should not be flung with any surprise claims. If that is permitted, the very calculation based on which the Answering Respondent purchased the Corporate Debtor would go haywire and the very plan of purchasing the Corporate Debtor would become unworkable. In the same judgment the

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Hon'ble Supreme Court also held that the claim squarely covers Central Government, State Government or any local authority. Respondent purchased the Corporate Debtor as a going concern at the stage of liquidation and is not privy to what all transpired during the stage of CIRP/liquidation, collation of claims, discharge of claims etc. The Applicant has not sought any relief against Respondent no.3. Therefore, no relief can be granted. Respondent no.3 prayed for dismissal of this application.

19. The applicant has filed its rejoinder dated 12.06.2025. By way of the same the applicant again reiterated that the liquidator amounts should have kept aside certain amount as contingent liability. It is stated that one Company Petition being CA (CAA) No. 53 of 2024 is being filed before Court 1 of this Tribunal for amalgamation of 10 companies wherein the Corporate Debtor is referred as Transferor Company No. 1 and along with other Companies which shall merge into Transferee Company i.e., OFB Tech Pvt. Ltd. In the said Company Application at Paragraph 5.1 vesting of assets is being mentioned and at paragraph no. 5.1.5. It is categorically mentioned that all the taxes of the Transferor Company shall be paid by the

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Transferee Company upon coming into effect of the scheme of amalgamation with its effective date from the appointed date pursuant to the provisions of section 230 to 232 of the Act. The clause 5.1.5 read as under:

“9.1.5, All the profits, retained earnings, Taxes (including advance tax, tax deducted at source, foreign tax credits and MAT credit), benefits, brought forward losses, indirect tax credits, refunds due, GST set off, any costs, charges, expenditure accruing to the Transferor Companies or expenditure or losses arising or incurred or suffered by the Transferor Companies shall for all purpose be treated and be deemed to be and accrue as the profits, Taxes (namely advance tax, tax deducted at source foreign tax credits and MAT credit, if any), or benefits, indirect tax credits or refunds due, GST set off, or any costs, charges, expenditure or losses of Transferee Company as the case may be upon the coming into effect of this Scheme and with effect from the Appointed Date pursuant to the provisions of Section 230 to 232 of the Act.”

20. It is stated that Respondent No. 3 is liable to pay the dues of the Applicant in view of the clause 5.5.1. The applicant stated that this Tribunal may direct the liquidator to recollect the amount of liquidation which is been disbursed by the liquidator under the Code and shall make a redistribution of the liquidation amount after considering the dues of the present

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Applicant as Secured Creditor. The applicant has filed its written submissions.

21. Respondent no.1 - liquidator has filed its written submissions.

By way of the same it is submitted that the Corporate Debtor has been sold as a going concern to M/s. OFB Tech Private Limited through e-auction, and a Sale Certificate dated 11.01.2022 has been duly issued in favour of the said successful bidder. Consequently, any disputes or issues raised by the Applicant State Tax Officer is exclusively between the successful bidder and the Applicant. The Liquidator, having lawfully discharged his duties and being ex-officio in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, has no further locus or role in the present application. The Respondent Liquidator prayed to hold that the sale of the Corporate Debtor as a going concern has been duly completed by issuance of the Sale Certificate dated 11.01.2022 in favour of M/s. OFB Tech Private Limited, and that any claims or disputes thereafter lie solely between the Applicant State Tax Officer and the said successful bidder.

22. Respondent no.3 - M/s. OFB Tech Private Limited has filed its written submissions. By way of the same it is submitted that

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the amalgamation scheme referred to in Para 5 of the rejoinder can only apply to existing liabilities and is thus not applicable in the present case. A conjoint reading of the Code and various judicial precedents conclusively protects the Successful Acquirer of the Corporate Debtor from any past claims including government dues. Thus, any claim prior to 11.01.2022 in the present case is not legally tenable against the Respondent. The Applicant has not sought any relief against the Answering Respondent.

23. Heard Ld. Counsel for parties and perused the record along with the written submissions.

24. Observations & Conclusions:

a) From the submissions from both the parties, we observe that

On 26.09.2019, respondent No.1 (earlier respondent No.1 liquidator) made a public announcement, inviting claims from stakeholders against the corporate debtor. On becoming aware of such proceedings against the Corporate Debtor, the applicant immediately submitted its proof of claim to respondent no. 1 on 22.10.2019 for an amount of INR 21,18,71,31,82/- pertaining to tax liability for the

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assessment years 2006-2007 to 2017-2018 (first quarter only) within the prescribed timeline. On 05.03.2020 the liquidator communicated to the applicant that the claims of the department cannot be admitted as the debt is disputed. It was stated in the communication that appeals against the assessment orders, which form the basis of the claim of the department, are pending before different appellate authorities.

b) This IA was filed on 29 July 2020. As per Sec 42 of the IBC 2016, the applicant should have filed this application within 14 days of rejection of the claim, however, subsequently sought waiver of the period of delay due to COVID 19 situation. It also amended the OFB Tech Private Limited (Successful Auction Purchaser) as one of the respondents which was allowed vide order dated 18.10.2024 and 4.12.2024.

c) The applicant has in his application submitted that the liquidator ought to have accepted such portion of the claim concerning assessment orders which in law, cannot be treated as sub-judice thereby rendering the tax liability as

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disputed. Contrary to the provisions of Regulation 25 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the respondent No.1 has not even assigned a notional value (fair value) to the claim of the applicant and by classifying it as disputed has rejected the claim and even adjudicated the same beyond his scope as liquidator and the decision to reject was conveyed after the applicant pursued repeatedly.

d)The respondent had filed a purshish dated 08.07.2023 that in the second appeal Nos.273 to 280 of 2021 filed by Gujarat Foils Ltd Vs The applicant (State of Gujarat) challenging the orders of the Learned Deputy Commissioner of State Tax, Appeal-7 (whereby the said first appeals were summarily dismissed on claims comprising of period from 2014-15 to 2017-18 (first quarter), the matter was heard on 17.03.2023 and matters recorded including the litigation under Sec 7 of the IBC 2016 and in Para 5 it observes that ..."it is clear that the first appellate authority has disallowed the appeal in summary nature without entering in to the merits of the case for non-payment of pre deposit and non-appearance before him.... Considering these facts, Tribunal is of the opinion

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that all the matters are sent back to the first appellate authority till final outcome of the NCLT Ahmedabad”. The order states further that “the appeal is allowed and direction of stay against recovery and first appellate authority is directed to take decision as per the final outcome of NCLT, Ahmedabad branch”.

e) We observe from the above submissions and have to prima facie examine whether the applicant claim before the liquidator can be accepted which is in fluid forms without any concrete crystallised liability. The plea of the applicant that the respondent liquidator should have formed a notional value for accepting the claim without rejection stating the reason that it was under appeal, is untenable and not in terms of the IBC provisions. The powers and duties of the liquidator as specified in Sec 35(1)(a) has been duly performed by the respondent liquidator. The liquidator as per Sec 40 (1) & (2) has the powers to verify the claims under Sec 39, to either admit or reject the claim, in whole or in part, as the case may be Provided....the liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within 7 days of such admission or

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rejection of claims”. The liquidator we observe has complied with the same.

f) The respondent liquidator has sold the assets of the CD as a “going concern” on as in where basis which is acquired by respondent No.2. Certain reliefs and concessions were granted, but on the date of rejection of the claim or till date neither the applicant nor the respondent have submitted before this tribunal as to whether the State Government department has arrived at the financial value of the liability of the CD, which is still under appeal and the proceeds of sale of assets have been disbursed by the liquidator to other creditors. Apparently, the distribution of assets has taken place in terms of Sec 53 of the IBC 2016 and consulting the stakeholders is apparently done in terms of Sec 35 (2) of the IBC 2016. The respondent liquidator who held the liquidation estate in terms of Sec 36(2) of the IBC 2016 in a fiduciary capacity and has rejected the claim which was not quantified and submitted by the applicant/claimant and the liability if any was under appeal, which was not adjudicated by the applicant/s appellate within the stipulated time period and

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the respondent Liquidator has apparently abided by the Regulation 5 of the Liquidation regulations of IBBI 2016.

g) Since the applicant has not been able to concretely give an assessment order/s which is still under appeal or dispute, it cannot drag the liquidation process further after the assets are distributed in terms of Sec 53 of IBC 2016, while the applicant is not considered by the decision of liquidator to be a eligible claimant. The respondent has distributed the proceeds in due process after consulting the creditors and has also filed an application for closure of liquidation process which is pending in another matter IA 311 of 2022 before this tribunal.

h) The applicant also submits that they were not aware of the sale of the CD as a going concern to R 3 (M/s OFB tech Pvt Ltd) who has taken over the CD as a going concern. Since they were not aware, they had not challenged the order, even though subsequently R 3 made party in this application. Irrespective of the plea made challenging the reliefs and concessions or the continuance of the CD as a going concern, the fact remains that the liquidator has rejected the claim of

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the CD as in eligible due to dispute/s and not providing the adjudicated claim/s in time before the liquidator even before sale of the CD as a going concern. The disputes raised were old and raised by the CD which was operated by the ex-Directors in its appeal and the new purchaser who has taken over the CD as the liquidator. The decision of the SCC recommending sale by the liquidator of the CD as going concern in its 16th SCC meeting held on 4.06.2021 under Regulation 32(3) and 32(f) of Liquidation Regulations was allowed vide the orders of this tribunal dated 4.10.2021. The stated sale notice was also issued on 22.11.2021 and the e-auction was subsequently conducted on 10.12.2021 and the sale proceeds were credited to the liquidators account on 11.01.2022. A copy of the sale agreement and the sale certificate has been provided by the respondent in IA 311 of 2022.

- i) The inordinate delay in adjudicating claim if any and not submitting a formal claim within the stipulated period prescribed under Sec 38(1) (which is 30 days) has neither been done nor has the claimant submitted the necessary documents and the crystallised amount as the applicant

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failed to complete the necessary procedure even though the CIRP was admitted on 30.11.2017 and the liquidation was ordered on 22.10.2019. No injustice is caused to the applicant as it is gross negligence as the respondent has already rejected the claim and the applicant has lost further legal rights to file the claim with appropriate adjudicated value in appeal, in time during the liquidation process.

j) The sale contract between the R 1 and the R 3 are separate contract and agreement, this tribunal merely views the merits of the liquidation process and the powers exercised by the liquidator in terms of Sec 35 and the distribution process to authorised/admitted claimants in terms of Sec 53. The successful purchaser has purchased the entity with the approval of creditors and approved by this tribunal to continue running the CD on a going concern basis which is an effective revival of the entity through a process of resolution which effectively retains the value of the CD and hence certain concessions were sought and allowed. Irrespective of the same, no malafide intention is proved or brought on record and is not under the purview of this tribunal.

Sd/-

Sd/-



25. Hence, we pass the following order:

ORDER

The application is rejected.

sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

GP-LRA

sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)