IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Aryak Dutt

WPA No. 6268 of 2026

SREI Equipment Finance Limited
Vs.
Union of India & Ors.

For the Appellants : Mr. Avra Mazumder,
Ms. Alisha Das,
Ms. Sreeja Mukherjee,
Ms. Rupomita Ghosh,
Ms. Saakshi Shaw,
Mr. Suman Bhowmik,
Ms. Elina Dey,
Mr. Gaurav Gupta.
... Advocates.

For the Respondent (CGST Authority) : Mr. Uday Sankar Bhattacharya
Mr. Kaustav Kanti Maitri
Ms. Banani Bhattacharya
...Advocates.

Heard on : 01.09.2026, 11.09.2026, 18.09.2026, 25.09.2026

Hearing Concluded On : 25.09.2026

Judgment Delivered On : 01.10.2026

Aryak Dutt, J.:

1. The petitioner, a Non-Banking Financial Company incorporated under the Companies Act, 1956, and is duly registered under the Goods and Services Tax laws, assails a Show Cause-cum-Demand Notice dated 26th September, 2025 along with summary in Form GST DRC-01 and the consequent Order-in-Original dated 29th December, 2025, with summary in Form GST DRC-07, by which the jurisdictional Central Goods and Services Tax Authority has confirmed a demand of IGST of Rs. 1,68,78,057/- under Section 73(9) of the Central Goods and Services Tax Act, 2017 (herein after referred to as the CGST Act), together with interest under Section 50 and penalty of Rs. 16,87,806/-, on the allegation of excess availment of IGST input tax credit on imported goods in Financial Year 2021-22. The petitioner also questions a notice dated 13th January, 2026 demanding interest under Section 50 of the CGST Act for alleged delayed filing of GSTR-3B returns for July and August, 2021.

2. The petitioner's case is that every one of these demands relates to a period before 11th August, 2023, the date on which the National Company Law Tribunal approved the resolution plan in its

corporate insolvency resolution process. In any event no claim in respect of these dues was ever lodged in that process. By force of Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the IBC" or "the Code of 2016"), as authoritatively construed by the Supreme Court, the dues stood extinguished and no proceeding in respect of them could thereafter be initiated or continued.

3. The material facts are not in dispute and are recorded in the impugned order in original itself. On an application by the Reserve Bank of India under Section 227 read with Section 239(2)(zk) of the Code of 2016 with rules of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, the National Company Law Tribunal, Kolkata Bench, by an order dated 8th October, 2021, admitted the petitioner and its holding company, SREI Infrastructure Finance Limited, into the Corporate Insolvency Resolution Process (hereinafter referred to as "the CIRP"). A moratorium under Section 14 of the Code of 2016 came into force from that date. Thereafter, public announcements inviting claims under Section 15 of the Code of 2016 were issued on 11th October, 2021.

4. Admittedly, neither the respondents nor any other GST authority lodged a claim before the Administrator/Resolution Professional in respect of the GST dues now demanded for the Financial Year 2021-22.

5. The resolution plan submitted by National Asset Reconstruction Company Limited was approved by the Committee of Creditors and thereafter by the Adjudicating Authority under Section 31 of the Code of 2016, by an order dated 11th August, 2023 (hereinafter referred to as "the Effective Date"). Clause 3.2.9 of the approved plan, deals with the Treatment of Government Authorities, which provides in substance that claims, liabilities and proceedings pertaining to the period prior to the Effective Date, whether known or unknown, assessed or unassessed, crystallised or contingent, shall be dealt with strictly in terms of the approved Resolution Plan and, save as specifically provided therein, shall stand extinguished. A challenge to the approval of the plan was rejected by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, on 5th January, 2024. The plan has therefore attained its finality.

6. More than two years after the Effective Date, an audit query dated 1st August, 2025, was issued alleging erroneous availment of IGST

Input Tax Credit for Financial Year 2021-22. The petitioner replied to the same on 22nd September, 2025, pointing out the concluded CIRP and the approved Resolution Plan. The impugned Show Cause-cum-Demand Notice followed on 26th September, 2025, proposing a demand of Rs. 1,68,78,057/- with penalty, aggregating to Rs. 1,85,65,863/-. The petitioner replied to the impugned show cause-cum- demand notice in Form GST DRC-06 on 22nd October, 2025, relying on Sections 31 and 238 of the Code of 2016, the decisions of the Supreme Court and the Board's own circulars. Thereafter, the respondent no.2, by the Order-in-Original dated 29th December, 2025, confirmed the demand of IGST. The order expressly records that the petitioner was under CIRP from 8th October, 2021 to 11th August, 2023, that no GST claim for the period was lodged before the Resolution Professional and that the resolution plan stood approved by the Adjudicating Authority, but nonetheless proceeds to confirm the demand on the footing that the cause of action arose after the moratorium.

7. By a separate notice dated 13th January, 2026, interest under Section 50 was demanded for alleged delay in filing GSTR-3B returns for July and August, 2021, which the petitioner answered on 22nd January, 2026 by reiterating the bar of extinguishment.

8. Learned Advocate appearing for the petitioner have submitted that Section 31(1) of the Code of 2016, binds the Central Government and every authority to whom statutory dues are owed. Under Section 238 the Code of 2016, overrides anything inconsistent in any other law, reliance in this regard has been placed on the case of ***Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd***., reported in ***(2018) 18 SCC 786***. The Supreme Court has also held in the case of ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta***, reported in ***(2020) 8 SCC 531***, ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd***., reported in ***(2021) 9 SCC 657***, ***Ruchi Soya Industries Ltd. v. Union of India***, reported in ***(2022) 6 SCC 343*** and ***Vaibhav Goel v. Deputy Commissioner of Income Tax,*** reported in ***(2025) 8 SCC 511***, that statutory dues not forming part of an approved plan stand extinguished and no proceeding in respect of them can be initiated or continued.

9. It was further submitted that on the very resolution plan in question the petitioner has succeeded before the Supreme Court being ***Commissioner of Sales Tax, Orissa v. SREI Equipment Finance Ltd.,*** *in* ***Civil Appeal Nos. 1436-1439 of 2010*** and before the High Courts of Karnataka, Gujarat, Bombay and

Allahabad in respect of pre-approval tax demands, including an Order-in-Original under the CGST Act for Financial Year 2021 quashed by the Gujarat High Court. This Court in the case of ***Ultra Tech Cement Ltd. v. Union of India*** in ***WPA 2036 of 2020***, decided on 18th September, 2026, has quashed pre-resolution income tax demands. CBIC by their own Circular No. 134/04/2020-GST dated 23rd March, 2020 and Instruction No. 1083/02/2022-CX8 dated 23rd May, 2022, themselves acknowledge that unfiled or belated claims stand extinguished on approval of the plan. Section 88 of the CGST Act concerns companies in liquidation and has no application to a revived corporate debtor. The writ petition is maintainable because the challenge goes to the root of jurisdiction.

10. Learned Advocate appearing for the CGST authorities fairly did not dispute the binding nature of ***Ghanashyam Mishra (supra).*** The contention, rather, was that determination or adjudication of a statutory tax liability is conceptually distinct from its recovery. In the case of ***Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs***, reported in ***(2023) 1 SCC 472,*** the Supreme Court recognised the continuing jurisdiction of the tax authority to assess and determine tax,

interest, fine or penalty while the moratorium operates, forbidding only recovery. Section 88 of the CGST Act shows that GST liabilities are contemplated in the insolvency context and Sections 73 and 75 furnish the machinery of determination. Section 238 of the Code of 2016, overrides only to the extent of actual inconsistency, and there is none between determining the liability and leaving its enforceability to the Code. No coercive action was taken during the moratorium. Alternatively, the adjudication itself ought not to be quashed and the Court may at best hold that recovery is subject to the approved plan.

11. Section 31(1) of the Code of 2016, as it stands after the amendment of 16th August, 2019, provides that the resolution plan approved by the Adjudicating Authority "shall be binding on the corporate debtor and its employees, members, creditors, 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". The CGST authorities are included.

12. The consequence of approval was explained by a Bench of Three Learned Judges of the Hon'ble Apex Court in the case of ***Ghanashyam Mishra (supra)***.

13. The rationale had earlier been stated by the Hon'ble Apex Court in the case of Committee of Creditors of Essar Steel India Ltd. (supra) which reads as "a successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up" all claims must be submitted to and decided by the resolution professional so that the applicant knows exactly what has to be paid and may take over the business "on a fresh slate".

14. In the case of ***Vaibhav Goel (supra)***, the Hon'ble Apex Court has held that the demand notices under the Income Tax Act were issued after approval of the plan for assessment years prior to it, no claim having been lodged. The Supreme Court has further held that the dues stood extinguished, and the subsequent demand raised is invalid once the resolution plan is approved by NCLT, no belated claim can be included therein that was not made earlier, and that such demands will operate as roadblocks in

implementing the approved resolution plan and are invalid and cannot be enforced.

15. Applying these principles, the position is plain. The tax period in question, Financial Year 2021-22, falls wholly before 11th August, 2023 and no claim was lodged during that period. The impugned order itself records these facts. The demand therefore stood extinguished on 11th August, 2023, and the respondents were not entitled thereafter to initiate any proceedings in respect to it. The show cause notice, being the very initiation of a proceeding under Section 73, and the Order-in-Original, being its culmination, are both proceedings in respect of an extinguished claim.

16. The finding in the impugned order that the cause of action arose after the moratorium does not improve the respondents' case. The liability, if any, relates to Financial Year 2021-22. Portion of it which relates to the months after 8th October, 2021, arose during the CIRP itself and was equally required to be brought to the notice of the Administrator/Resolution Professional so as to be dealt with in the plan. When the respondents issued the show cause notice on September, 2025, there was no claim left to adjudicate.

17. The approved plan itself, by Clause 3.2.9, provides that all pre-Effective Date claims of Government authorities, whether assessed or unassessed, known or unknown, shall stand extinguished save as provided therein. The plan, having been approved under Section 31 of the Code of 2016 and having attained finality, binds the respondents contractually as well as statutorily.

18. The respondents' case rests on ***Sundaresh Bhatt (supra)***. On a careful reading, that decision does not support them.

19. The case of ***Sundaresh Bhatt (supra).*** was concerned with the period while the moratorium operated under Sections 14 and 33(5) of Code of 2016 in a liquidation, where the corporate debtor's liabilities are not extinguished but are paid out of the liquidation estate in the order of priority under Section 53.

20. In the case of ***Sundaresh Bhatt (supra)*** it was held that demand notices are “an initiation of legal proceedings against the corporate debtor”. ***Ghanashyam Mishra (supra)*** bars not only recovery but the initiation or continuation of “any proceedings” in respect of an extinguished claim. The respondents' distinction between adjudication and recovery cannot survive. Nor, for that matter, is the impugned order a mere academic quantification: it confirms a demand under Section 73(9), levies interest and imposes penalty,

and is accompanied by a summary in Form GST DRC-07, which on its own terms is a recoverable demand under the CGST Act.

21. Section 88 of the CGST Act does not assist the respondents. It deals with the liability of a company in liquidation and of its directors. The petitioner was never ordered to be wound up. CIRP culminated in a resolution plan and it continues as a going concern under new management. Even otherwise, Section 88 presupposes a subsisting tax liability and cannot revive one extinguished under Section 31(1) of the Code of 2016. The CGST Act itself, by Section 82, makes the Government's first charge "save as otherwise provided in the Insolvency and Bankruptcy Code, 2016", and Section 238 of the Code gives the Code overriding effect over anything inconsistent in any other law, in this regard reliance is placed on ***Sundaresh Bhatt (supra)***. The respondents' reliance on Sections 73 and 75 of the CGST Act is answered in the same way those provisions confer a general power of adjudication, but its exercise in respect of a claim that the Code has extinguished is directly inconsistent with Section 31(1).

22. It is also relevant that the Board has itself recognised the position. Circular No. 134/04/2020-GST dated 23rd March, 2020, contemplates that dues for the period prior to the insolvency

commencement date are to be claimed before the Adjudicating Authority/Resolution Professional, and the Standard Operating Procedure under Instruction No. 1083/02/2022-CX8 dated 23rd May, 2022, as placed before this Court, records that claims not submitted, or submitted belatedly, stand extinguished upon approval of the resolution plan. The impugned order does not advert to either. Departmental adjudicating officers cannot ignore instructions of the Board issued for the uniform administration of the Act.

23. The same resolution plan has been considered by several High Courts in the petitioner's own case, pre-approval tax demands under different statutes, including an Order-in-Original under the CGST Act, have been set aside. Those decisions have not been interfered with. Considerations of consistency and judicial comity point in the same direction as the law laid down by the Supreme Court.

24. The existence of an appellate remedy under Section 107 of the CGST Act is not an absolute bar to the exercise of writ jurisdiction where the authority has acted wholly without jurisdiction or in disregard of binding law. In this regard reliance is placed in the case of ***Whirlpool Corporation v. Registrar of Trade Marks***,

reported in ***(1998) 8 SCC 1*** and ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer***, reported in ***2023 SCC OnLine SC 95***. The facts are admitted. The question is one of pure law going to the root of the respondents' authority to initiate the proceedings at all and the answer is concluded by decisions of the Supreme Court. Relegating the petitioner to an appeal, with its attendant pre-deposit, would serve no purpose.

25. In view of the conclusion reached above, it is unnecessary to examine the petitioner's further contention that no penalty could be imposed in a proceeding under Section 73 absent any finding of fraud, wilful misstatement or suppression.

26. For the reasons stated, the writ petition succeeds. It is held that the dues claimed by the respondents for Financial Year 2021-22, together with interest and penalty thereon, stood extinguished upon approval of the resolution plan by the Adjudicating Authority on 11th August, 2023, and that the respondents had no jurisdiction to initiate or continue any proceeding in respect thereof.

27. The Show Cause-cum-Demand Notice dated 26th September, 2025 with summary in Form GST DRC-01, the Order-in-Original dated 29th December, 2025 and the summary of order in Form

GST DRC-07 of even date, and all proceedings taken thereunder, are quashed and set aside.

28. The notice dated 13th January, 2026 demanding interest under Section 50 of the CGST Act for the tax periods July and August, 2021 is also quashed.

29. Nothing in this order shall be construed as an expression of opinion on the subsequent liability of the petitioner if any.

30. Accordingly, **WPA No. 6268 of 2026 is allowed** in the above terms.

31. There shall be no order as to costs.

32. Urgent certified copies of this judgment and order, if applied for, be supplied to the parties upon compliance of all formalities.

(Aryak Dutt, J.)

High Court
सत्यमेव जयते
Calcutta