

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1063 of 2025

[Arising out of Order dated 09.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench Court V in IA 1368/2025 in C.P. No.(IB) 1023/MB/C-V/2021]

IN THE MATTER OF:

Shanti International, Through Amol Mittal

...Appellant

Versus

**Ram Singh Setia,
Liquidator of Gajanan Solvex Ltd.**

...Respondent

Present:

For Appellant : Ms. Anjali Sharma, Mr. Thanglunkin and Mr. Hiaikhuanlung, Advocates.

For Respondent :

J U D G M E N T

Ashok Bhushan, J.

This Appeal has been filed by Successful Bidder challenging the order dated 09.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court V in IA No.1368 of 2025 filed by the Appellant. In the Application which was filed by Appellant-Successful Bidder, the Appellant praying for various reliefs:-

“a. Consider and allow this IA in terms of Section 60(5) read with Rule 11 of NCLT Rules, 2016

- b. Pass appropriate directions for transfer of ownership of Gajanan Solvex Limited to the Applicant along with certain essential reliefs and concessions as mentioned under Para 31 and aforementioned Table of the present application;*
- c. Direct the Corporate Debtor/ Applicant shall be at liberty in approach this Hon'ble Adjudicating Authority to address any difficulties faced with respect to implementation in taking over of the Corporate Debtor in liquidation;*
- d. Grant liberty to the Applicant to amend, alter, modify, delete, rescind and/or substitute any prayer(s); pass any further orders(s) or directions that this Hon'ble Adjudicating Authority may deem fit and proper;*
- e. To the extent any secretarial filings, corporate actions and compliances and/or any other actions, filings, intimations, etc. are required to be made in connection with any step set forth in this Application, the Liquidator, shall be deemed to be fully authorized to act on behalf of the Corporate Debtor and to undertake all such actions. Without prejudice to the foregoing, the Applicant may, if required and from time to time, seek necessary directions from the Adjudicating Authority in connection with actions to be undertaken or filings to be made with the ROC and/or any other statutory or regulatory authority in connection with matters contemplated herein:*
- f. The Applicant may consent on behalf of all persons concerned, to any minor or operational modifications or amendments of the provisions of this application or to any conditions which the Adjudicating Authority and/or any other authorities under law may deem fit to approve of or impose or which may otherwise be considered necessary or desirable for settling any question or doubt or difficulty that may arise in carrying out the provisions of this application and do all acts, deeds, thing as may be*

necessary, desirable or expedient for giving effect to the terms thereof;

g. Issue such other orders as the Hon'ble Tribunal may deem fit.”

2. The Adjudicating Authority by the impugned order although granted several reliefs as prayed for by the Appellant but some of the reliefs have not granted. The application was disposed of accordingly. Aggrieved by the order by which some of the reliefs and concessions as prayed by the Appellant have not been granted, this Appeal has been filed.

3. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

3.1. The State Bank of India filed an application under Section 7 against the Corporate Debtor- M/s. Gajanan Solvex Limited on which CIRP commenced vide order dated 20.07.2022 passed by the Adjudicating Authority. On 01.03.2023, the Adjudicating Authority passed an order of liquidation of the Corporate Debtor. Liquidator published e-auction sale notice inviting bids for the Corporate Debtor. E-auction process document was also issued by the liquidator. 12th E-auction was fixed for 26.07.2024. Auction notice was issued for sale of the Corporate Debtor as a going concern on “as is where is basis” “as is what is basis” “whatever there is basis” and “no recourse basis”. Appellant emerges as highest bidder for sale consideration of Rs.8,91,00,000/-. After full consideration was paid by the Appellant, Sale Certificate dated 24.09.2024 was issued by the liquidator in favour of the Appellant. The Appellant filed an IA No.1368 of 2025 praying for certain reliefs and concessions to manage the affairs of the Corporate

Debtor in the manner that would preserve its ongoing business and operations. The Adjudicating Authority after hearing the Appellant and Counsel for the Liquidator in paragraph 25 of the order granted various reliefs and concessions prayed by the Appellant. However, with respect to certain reliefs and concessions, Adjudicating Authority either did not grant reliefs and concessions or observed that the Appellant may apply to concerned authorities. Aggrieved by the order of the Adjudicating Authority, this Appeal has been filed. In the Appeal, Appellant has prayed for following reliefs:-

*“a) Set aside the impugned order dated 09.05.2025 passed by the Hon'ble National Company Law Tribunal Bench-V at Mumbai, in I.A. 1368/2025 in C.P. No. (IB) 1023/MB/C-V/2021, to the extent that it either refuses to grant certain essential reliefs and concessions to the Appellant/Successful Bidder, or grants them but subject to limitations/conditions, as noted at paragraph 16 hereinabove of the present appeal; and
b) Pass an affirmative order granting the said reliefs and concessions to the Appellant/Successful Bidder as are noted at paragraph 16 hereinabove of the present appeal, being the reliefs and concessions expounded in rows 11, 12, 13, 16, 17, 18, 21, 24, 25, 26, 27, 29, 30, 31, 32, 36, 37, and 38 in the table set out at paragraph 22 of the impugned order dated 09.05.2025.
Such other order or orders as may be deemed fit in the circumstances may also be passed.”*

4. A perusal of the prayers made in the Appeal indicate that Appellant is questioning the decision taken by the Adjudicating Authority with respect to various Serial Nos. as claimed in prayer of the Appeal.

5. We have heard Learned Counsel for the Appellant and perused the record.

6. Counsel for the Appellant submits that the Adjudicating Authority has passed an order granting reliefs and concessions. Relying on the judgment of this Tribunal in "***M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. Vs KTC Foods Pvt. Ltd. through Liquidator, Mr. Anup Kumar Singh- (2022) SCC ONLINE NCLAT 85***", it is submitted that the Adjudicating Authority has also referred to the earlier order passed by the NCLT, Mumbai Bench in "***Devendra Singh, Liquidator of Venus Rolling Mills Pvt. Ltd. Vs. Shantech Intemational Pvt. Lrd.***" in I.A. No. 610 Of 2024 in C.P. (IB) No. 350/MB/C -III/2019". It is submitted that the Adjudicating Authority failed to grant various reliefs and concessions which were granted by co-ordinate Bench in the matter of Venus Rolling Mills Pvt. Ltd.

7. There is no dispute that successful bid which was submitted by the Appellant was accepted on the basis of "as is where is basis" "as is what is basis" "whatever there is basis" and "no recourse basis". Adjudicating Authority following the judgment of Appellate Tribunal in "***M/s Shiv Shakti Inter Globe Exports Pvt. Ltd.***" (supra) allowed various reliefs and concessions as prayed. In paragraph 22 of the impugned order, Adjudicating Authority has noted various reliefs which were prayed for by the Appellant.

In total 40 reliefs and concessions were prayed for as noticed in paragraph 22. Adjudicating Authority has granted 22 reliefs and concessions, the order indicates that all reliefs from 1 to 10 prayed for, Appellant has been granted. Reliefs which have not been granted as claimed in relief clause 21(b) are Item Nos.11, 12, 13, 16, 17, 18, 21, 24, 25, 26, 27, 29, 30, 31, 32, 36, 37 & 38. Grant of reliefs 1 to 10 as noticed above clearly indicate that all reliefs pertaining to continuance of operation of business Appellant and acquisition of the Corporate Debtor by the Appellant has been granted. Grant of reliefs 1 to 10 clearly permit the Appellant to carry on the business of the Corporate Debtor with necessary reliefs and concessions. First relief which has not been granted and which has been questioned in this Appeal is relief at Item No.11. It is relevant to notice Relief 11. A perusal of the relief clause 11 indicates that the said prayers run in more than 10 Columns. It is useful to extract relief prayer 11 which is as follows:-

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| 11. | Direct the respective Governmental Authorities (including but not limited to the CBDT, Central Board of Excise, ESIC, PF Departments and Customs/ respective value added tax, GST, MSEDCL, Gram Panchayat [Surjatpur], Zilla Parishad, FSSAI, Maharashtra Pollution Control Board, Fire Department, other authorities, tribunals, arbitral body, land revenue authorities, stamp authorities) to: <ul style="list-style-type: none"> • provide relief to the Corporate Debtor from all past Litigations (as | Not granted, however, may apply to concerned authorities. |
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| | <p>defined in the Acquisition Plan) pending at different levels and provide waiver from all Tax dues, including interest and penalty on such Litigations;</p> <ul style="list-style-type: none"> • Unabsorbed depreciation from past years shall be allowed to be utilized, irrespective of whether the Income Tax returns were not filed or were filed late by the Corporate Debtor, as this is permitted under the Income Tax Act. Relevant section is been placed as follows:- The allowance for carrying forward and utilizing unabsorbed depreciation provided is under Section 32(2) of the Income Tax Act, 1961. Section 32(2) states unabsorbed that depreciation can be carried forward indefinitely and can be set off against any income, whether or not the income tax return was filed on time. This is a unique feature unabsorbed of depreciation, as other losses typically require the timely filing of returns to be carried forward. • Brought forward tax losses of the Corporate Debtor to be permitted to be carried forward and set off against | |
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| | <p>future income as a change of shareholding of the Corporate Debtor is pursuant to the bid submitted by the Applicant under this E-Auction process; the bid submitted by the Applicant should be considered to be a resolution plan under section 79 of the Income Tax Act, 1961 and sale of Corporate Debtor as a going concern should be treated in the same manner as to the implementation of the resolution plan under the Insolvency Corporate Resolution Process;</p> <ul style="list-style-type: none"> • allow the write-offs as a tax deduction in the year of such write-off; • provide that income/gain/ profits, if any, arising as a result of giving effect to the acquisition of Para the Corporate Debtor on a clean slate basis by the Applicant, should subjected not be to Tax, Deva including MAT in the hands of Corporate Debtor. Further, allow all MAT credit of the Corporate Ltd Debtor to continue with the Corporate Debtor (on a going concern basis); • provide that book generated out write-off of assets/any losses of properties of Corporate Debtor shall be set-off | |
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| | <p>against the book profits going forward;</p> <ul style="list-style-type: none"> • provide relief from applicability of, and payment of, Taxes, if any, which may arise as result of implementation of this Plan either on the Bidder or the Corporate Debtor or any other Person who is likely to be impacted due to the implementation of this Plan (including, without limitation, under Sections 45, 50CA, 50D and 56 under the Income Tax Act, 1961 as well as the Central Goods and Services Tax Act, 2017); • grant exemption/waiver from applicability of Section 281 of the Income Tax Act, 1961, including from the requirement of obtaining no objection certificate from Tax Authorities in respect of the implementation of the Plan; • any requirement to obtain waivers from any tax authorities including in terms of section 115B of the Income Tax Act, 1961 be deemed to have been granted; • If any Income Tax related returns are not filed or delayed filed by Corporate Debtor then Successful Bidder | |
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| | <p>should be allowed to file these returns and it should be treated as if the returns were filed in time. Further, the Applicant be allowed to file modified / rectified /revised returns up-to transfer Date. Further the benefit of brought forward and carry forward losses relating to this period will be available to the Corporate Debtor under the new management for fresh period of eight years from the Transfer date.</p> <ul style="list-style-type: none"> • Exemption from Tax on Restructuring of Balance Sheet including Debt Assignment: No Income Tax shall be imposed on the conversion of liabilities as per the books by assignment to Applicant conversion or into capital reserves or Profit & Loss Account or the issue of bonus shares from the Reserve and Surplus of the Corporate Debtor or conversion to Securities Premium Account to successful bidder or proposed its proposed shareholders or transfer of Share Capital to Capital Redemption Reserve as per Restructured the Balance annexed as Annexure-A. <p><u>Opt for Section 115BAA:</u> The</p> | |
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| | <p>Corporate Debtor (CD) should be treated as New industry and allowed to opt for the concessional tax rate under Section 115BAA Of the Income Tax Act, 1961, to reduce the tax burden.</p> <p><u>Section 115BAA</u> provides that domestic companies can opt for a reduced corporate tax rate of 22% (plus applicable surcharge and cess) without claiming certain specified deductions or exemptions.</p> <p><u>Opt for Section 115JAA:</u> The successful bidder should be allowed to utilize the MAT Credit available under the provisions of Section 115JAA of the Income Tax Act, 1961.</p> <p><u>Section 115JAA</u> provides that any Minimum Alternate Tax (MAT) paid under Section 115JB can be carried forward and set off against future tax liabilities computed under the normal provisions of the Income Tax Act.</p> <ul style="list-style-type: none"> • allow all government schemes, capital incentives subsidies but not limited to any other subsidiaries, benefits, polices as applicable to the Corporate Debtor, to continue to be applicable to the | |
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| | <p>Corporate Debtor, unless otherwise provided in this Plan to make the unit viable and as a going concern and all government schemes, incentives subsidies but not limited to any capital other subsidiaries, benefits, policies to condone the pre-existing conditions which could not be maintained by Applicant during CIRP & Liquidation Process for claiming or seeking benefits of such schemes, subsidies, benefits, policies to make the unit viable and as a going concern.</p> | |
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8. Adjudicating Authority with respect to above reliefs has observed “not granted, however, may apply to concerned authorities”. A bare look of the reliefs as contained in prayer 11 as noted above indicate that the prayers made by Appellant is too wide and general covering large number of authorities, local bodies, tax authorities. The mere fact that Appellant has been declared Successful Bidder in auction of Corporate Debtor as a going concern does not entitle the Appellant to claim all kind of reliefs which can be imagined by the Appellant, benefit from all statutory compliances. We are surprised to note the extent of reliefs claimed at Item No.11 which runs into 10 columns. Reliefs which are sought in Item No.11 is neither admissible

nor could not even prayed for by Appellant- Successful Bidder. Filing of such application by Successful Bidder is nothing but waste of time of Court.

9. Similarly, with regard to other reliefs which have not been granted as noticed in appeal. One of the reliefs which has been referred to Item No.12 which Item No.12 although has been granted but with certain condition. It is useful to extract prayer 12 which is as follows:-

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| 12. | A direction be issued authorizing the Corporate Debtor to prepare and file financial statements and returns (with required disclaimers) either through the Applicant or through any authorized person as deemed fit, with relevant regulators such as the Registrar of Companies, Income Tax Authorities, or any other governmental authorities for period prior to issue of Sale Certificate. | Granted, for the period prior to ICD and subject to requisite compliances payment of fees etc as per applicable rules/procedure/law. |
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10. We fail to see when relief as claimed in prayer 12 has been granted for the period of ICD what grievance can be raised by the Appellant. Another example of excessive and unmerited relief is prayer 13 which is to the following effect:-

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| 13. | Post-acquisition, any debt owed to financial creditors for any trading liability and other than capital in nature, by the Corporate Debtor (CD) shall be assigned to the Applicant and all other creditors shall | Not granted |
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| | <p>be converted into capital reserve and/or security premium account and/or write back through Profit & Loss A/c and the same can be utilised for issue of shares to the Applicant and their nominees as and when required. This conversion will take effect immediately on Transfer Date.</p> | |
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11. Similarly, other reliefs which have been granted as claimed in paragraph 21(b) are reliefs which could not have been granted and the Adjudicating Authority has rightly taken a decision not to grant such reliefs, however, even by not granting reliefs has observed that Appellant may apply to concerned authorities. There is no error in decision taken by the Adjudicating Authority where substantially all reliefs which are necessary for the Appellant to run the Corporate Debtor as a going concern has been granted.

12. Counsel for the Appellant also sought to contend that the Adjudicating Authority has not given any reason for not granting any particular prayer. Suffice it to say that Adjudicating Authority has taken into consideration all 40 prayers noted in paragraph 22 of the impugned order and has granted substantial relief by allowing relief 22. Mere fact that no specific reason has been given in Column 2 does not vitiate the order. There is no statutory entitlement of the Appellant to claim a particular relief and relief has been granted by the Adjudicating Authority only with the intent and purpose to see that the Corporate Debtor is run by Successful Bidder who have purchased the same as a going concern.

13. Another submission which has been advanced by the Counsel for the Appellant is that the NCLT, Mumbai Bench in another matter Venus Rolling Mills Pvt. Ltd. (supra) has granted reliefs which have been denied in the impugned order. judgment of the NCLT Mumbai Bench has been noticed in paragraph 19 of the impugned order where while noticing the said order, it was held that the NCLT by upholding the order of the NCLT held that all dues of pre-CIRP period shall stand and all claims/dues/liabilities up to the liquidation commencement date shall be dealt as per Section 53 of the Code. Reliefs which have been granted to the Appellant are in accordance with the judgment as noticed in paragraph 19 of the impugned order. Paragraphs 19 and 20 of the impugned order are as follows:-

“19. Furthermore, this Tribunal has passed an order dated 08.06.2024 in Devendra Singh, Liquidator of Venus Rolling Mills Pvt. Ltd. versus Shantech International Private Limited, I.A. No. 610 of 2024 in CP (IB) No. 350/MB/C-III/2019, which has been upheld by the Hon'ble National Company Law Appellate Tribunal by judgment dated 20.09.2024 in Company Appeal (AT) (Ins.) No. 1520 of 2024 stating that all dues up to pre-CIRP period shall stand and all claims/dues/liabilities up to the liquidation commencement date shall be dealt as per Section 53 of the Code.

20. In Devendra Singh, Liquidator of Venus Rolling Mills Pvt. Ltd. (supra), the Applicant therein had prayed for a relief/concession similarly as sought for with in this petition, which is reproduced as follows:

"15.10 A direction that on and from the Acquisition date, all the claims or demands made by, or liabilities or obligations owned or payable to any actual or potential creditors, Financial Creditors, Operational Creditors, Workmen & Employees of the Corporate Debtor including the Government Dues (including but not limited to liabilities, interest and penalties, duties, etc. on account of income-tax, tax deduction at source, tax collection at source, goods and services tax, custom duty, value added tax, service tax, wealth-tax, cess, DGFT dues, FEMA, RBI regulations/guidelines etc.) whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to the Acquisition date be written off in full and shall stand permanently extinguished."

The above referred prayer was not granted. However, the Applicant was given liberty to approach the appropriate and concerned authorities."

14. We, thus, are of the view that the Adjudicating Authority had taken due consideration of the order of the NCLT Mumbai Bench passed in the matter of Venus Rolling Mills Pvt. Ltd. (supra) and the submission of the Appellant that several reliefs which were granted in the matter of Venus Rolling Mills Pvt. Ltd. (supra) has been denied to the Appellant and has not been substantiated. We may further notice that the Appellant itself in paragraph 15 of the Appeal has noticed the reliefs prayed and those granted

and not granted in Venus Rolling Mills Pvt. Ltd. (supra). A perusal of the said paragraph itself indicates that in the said case also several reliefs were not granted by the Adjudicating Authority and in certain reliefs, liberty was granted to the bidder to apply for concerned authorities. We, thus, do not find any substance in the above submission of the Appellant to find any fault in the impugned order in not granting certain prayers by the Adjudicating Authority. We have considered the submissions of the Counsel for the Appellant, perused the order impugned, details of the reliefs which have not been granted and where Appellant was permitted to apply to the concerned authorities. We do not find any ground to interfere in the impugned order. The Appellant is not entitled for any reliefs as prayed in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

1st September, 2025

Anjali