

Regulatory Alert

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Supreme Court holds that tax and other statutory dues stand extinguished on approval of the resolution plan

Once a resolution plan of a corporate debtor is approved by the adjudicating authority under the Insolvency and Bankruptcy Code, the treatment of claims of tax and other statutory dues provided therein shall be binding on the tax and other statutory authorities and any claims of tax and other statutory authorities which are not part of the resolution plan shall be extinguished. Consequently, any proceedings in respect of such dues could not be initiated or continued after the approval of the resolution plan.

The Supreme Court of India¹ has finally put to rest the litigation surrounding the treatment of tax and other statutory dues under the resolution plan approved by the adjudicating authority i.e. National Company Law Tribunal ('NCLT') under the provisions of the Insolvency and Bankruptcy Code, 2016 ('IBC').

Facts of the case

This significant ruling was pronounced by the Supreme Court after hearing a batch of matters. Each of the matters heard and decided on by the Supreme Court involved a unique set of facts.

To summarise briefly –

- In Ghanshyam Mishra's case² the appellant had challenged the decision of National

¹ Ghanashyam Mishra And Sons Private Limited through the Authorised Signatory v. Edelweiss Asset Reconstruction Company Limited through the Directors & Ors. Civil Appeal No. 8129 of 2019

with WP (Civil) No. 1177 of 2020 and Civil Appeal Nos. 1550-1554 of 2021

² Civil Appeal No. 8129 of 2019



Company Law Appellate Tribunal in which, inter alia, it was held that even after the approval of the resolution plan of the Corporate Debtor, workmen who were employed by the Corporate Debtor could move before a Civil Court or Labour Court against the Corporate Debtor for their claim of wages, tax and other statutory dues and other benefits which were not taken care of in the resolution plan.

- In Ultratech Nathdwara's case³, the appellant had preferred a writ petition before the High Court of Allahabad challenging the order of Additional Commissioner (Appeal), Commercial Taxes, Ghaziabad in which it was held that certain proceedings concerning the Entry Tax would remain unaffected in the State of Uttar Pradesh irrespective of the approval of the resolution plan by NCLT. The Allahabad High Court in its order held that the appellant should avail alternative remedy available under the provisions of the VAT Act.
- In Monnet Ispat's case⁴, the resolution plan was approved by the NCLT in July 2018. However, after the approval of the resolution plan, certain demand notices were issued for recovery of Service Tax. The said demand notice was challenged by the appellant in the writ petition before the Supreme Court.
- In Electrosteel Steels's case⁵, the resolution plan was approved by the NCLT in April 2018. However, Jharkhand VAT authorities were seeking to recover certain dues on account of tax penalty under the VAT Act for the period before the initiation of the insolvency resolution process. The appellant filed a writ petition before the Jharkhand High Court against the same; however, the writ petition was rejected, inter alia, on the grounds that

the resolution plan was not binding on the state government since it did not participate in the insolvency resolution proceedings.

Issues considered by the Supreme Court

In the batch appeals certain common but important issues arose for the consideration of the Supreme Court which are as under:

- Whether the resolution plan approved by the adjudicating authority under the provisions of the IBC is binding on the Central Government, any State Government or any local authority?
- Whether the amendment made in 2019 to Section 31 of the IBC (which specifically provides that the resolution plan shall be binding on the Central Government, any State Government or any local authority to whom any tax and other statutory dues are owed) is clarificatory and therefore retrospective in nature?
- After approval of the resolution plan, should a creditor including the Central Government, State Government or any local authority entitled to initiate any proceedings for the recovery of any of their dues from the Corporate Debtor, which are not a part of the resolution plan approved by the adjudicating authority?

The ruling of the Supreme Court

- In this ruling, the Supreme Court analysed in detail the amendment to section 31 of the IBC with effect from August 16, 2019, brought out by the amendment act of 2019 which specifically provided that the resolution plan would be binding on Central Government, any State Government or any local authority including the legislative intent of the said amendment.

³ Civil Appeal No. 1554 of 2021 Arising out of Special Leave Petition (Civil) No. 11232 of 2020

⁴ Writ Petition (Civil) No. 1177 of 2020

⁵ Civil Appeal Nos. 1550-1553 of 2021 arising out of Special Leave Petition (Civil) Nos. 7147-7150 of 2020



- At the outset, the Supreme Court held that for insolvency proceedings which arise after the date of amendment of section 31 of the IBC (i.e. August 16, 2019) there could be no ambiguity that any tax and other statutory dues which do not form part of the approved resolution plan shall stand extinguished.
- The Supreme Court said that the only issue which could occur would be when the insolvency proceedings were initiated before the date of the amendment, however, even for such proceedings, it was held that the claims as provided in the resolution plan shall be frozen and will be binding on the Corporate Debtor, its employees, Central Government, any State Government or any other local authority.
- On the date of approval of the resolution plan, all such claims which are not part of the resolution plan shall stand extinguished. Furthermore, no person can initiate or continue any proceedings in respect of a claim which is not part of the resolution plan.
- In coming to the above conclusion the Supreme Court also held that the amendment to section 31(1) brought about by the amendment act of 2019 is clarificatory and declaratory and therefore will be effective from the date the IBC came into effect.
- The Supreme Court also held that even if the amendment was not brought, the term 'other stakeholders' used in section 31(1) would squarely cover the Central Government, any State Government or any local authority. Therefore, the position in the law concerning the status of the tax and other statutory dues would have been the same i.e. all claims against the Corporate Debtor shall stand

extinguished on approval of the resolution plan by the adjudicating authority.

- The Supreme Court recognised that the legislative intent behind this provision is to freeze all claims so that the resolution applicant starts on a clean slate and is not 'flung' with any surprise claim. Furthermore, the Supreme Court went on to say that if such a provision was not made, then the very basis on which the resolution applicant submits a resolution plan would go haywire and the resolution process would be unworkable.

Dhruva Comments

This ruling of the Supreme Court is very welcome and validates the legislative intent of allowing the resolution applicant to start on a clean slate. Certain tax and statutory authorities and even certain High Courts were taking varied views and interpretations of the provisions of IBC regarding the claim of tax and other statutory authorities for the period before the date of approval of the resolution plan, and were initiating or continuing the proceedings. This ruling should now put to rest all such claims with respect to the Corporate Debtor once the resolution plan is approved by the adjudicating authority. This is a much-awaited decision of the Supreme Court which will help in serving the actual purpose for which IBC was introduced i.e. to revive and help the Corporate Debtor to stand on their feet again with a clean slate.

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