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Clean Slate Theory - Claims not forming part of an approved resolution plan get extinguished



The Supreme Court in its recent judgment in the case of *Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited & Ors*^[1] has ruled that once a resolution plan is approved by the Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code, 2016 (“Code”) all claims which are not a part of the 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. The Court further held that the 2019 amendment to Section 31 of the Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code came into effect.

Factual Spectrum

The Supreme Court was hearing a batch of matters wherein the issue was common – whether after approval of resolution plan by the Adjudicating Authority, a creditor including the Central Government, State Government or any other local authority is entitled to initiate any proceedings for

recovery of any of dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the Adjudicating Authority.

In all the appeals, the parties aggrieved by the Resolution Plan were statutory authorities like the State Commercial Tax Department, State Mining Department, Income Tax Department etc. in respect of their respective outstanding demands against the Corporate debtor. For instance, in one of the appeals, despite the resolution plan being accepted by the Adjudicating Authority, the Commercial Tax Authorities continued and pursued their earlier tax demands (opened against the old Corporate Debtor) against the successful resolution applicant / newly formed Corporate Debtor.

The Hon'ble National Company Law Appellate Tribunal, against whose decisions these bunch of Appeals came to be filed had given liberty to various class of creditors including Workmen and government to take recourse to such proceedings as available in law for raising its claims. This observation did not go well with the successful Resolution Applicants who now approached the Supreme Court seeking the same to be set aside.

Another question before the court was as to whether the amendment to Section 31 by the 2019 Amendment is clarificatory /declaratory or substantive in nature? Section 31 of the Code (prior to the 2019 Amendment) provided that a resolution plan once accepted by the Adjudicating Authority shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The 2019 Amendment to the Code inserted the words *"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"* to Section 31 of the Code.

Court's Reasoning

The Court took cognizance of the fact that the legislature has given paramount importance to the commercial wisdom of the Committee of Creditors and the scope of judicial review by the Adjudicating Authority and the Appellate Authority is Limited. The Court held that a bare reading of Section 31 of the Code would 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 Committee of Creditors meets the requirements as required under the Code, it shall be binding on

the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders.

Under the Code and the Regulations framed thereunder, the Resolution Professional is required to also prepare an Information Memorandum. This Information Memorandum is a rather detailed document and is required to contain a huge host of details such as assets and liabilities of the Corporate Debtor, its creditors and their claims, details relating to litigations, investigations etc., details relating to workers – their claims etc. 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. 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, 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 a fresh slate on the basis of the resolution plan approved.***

All claims which are not a part of the 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.

Court's Decision

The Court thus held that once a resolution plan is duly approved by the Adjudicating Authority under 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 and that 2019 Amendment to Section 31 of the Code is clarificatory and declaratory in nature and therefore will be effective from the date on which Code has come into effect.

However, in order to ensure that the claims are part of an approved resolution plan, the creditor must do its due diligence and verify as to whether any proceedings have been initiated against the corporate debtor under the Code.

Conclusion

The above is a much awaited and welcome ruling as it will certainly bring forward the dominant purposes of the Code i.e. the revival of the Corporate Debtor and to make it a running concern. The same will certainly facilitate the successful Resolution Applicant to truly start afresh. However, in order to ensure that the claims are part of an approved resolution plan, the creditor must do its due diligence and verify as to whether any proceedings have been initiated against the corporate debtor under the Code. Further, the claims must be filed on time before the insolvency resolution professional appointed for the corporate debtor. This ought to be done even if there have been proceedings initiated under any other law by the creditor against the corporate debtor in respect of such claims.

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[\[1\]](#) Civil Appeal No. 8129 of 2019, Decided on 13 April 2021.

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