



INSOLVENCY & BANKRUPTCY

Resolution Plan that fails to address Statutory Dues is bound to be rejected by the Adjudicating Authority: Supreme Court

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The Hon'ble Division Bench, Supreme Court comprising of Justice Indira Banerjee, and Justice A.S. Bopanna, in **State Tax Officer (1) v. Rainbow Papers Limited** (Civil Appeal No. 1664 of 2020), on 6th September, 2022, held that a Resolution Plan which altogether fails to address statutory demands payable to the state government or legal authorities is bound to be rejected by the Adjudicating Authority.

Facts of the Case:

In the present case, the State Tax Officer (**"Appellant"**) belatedly filed a total claim of Rs.47.36 Crores with the Resolution Professional (**"RP"**) of Rainbow Papers Limited (**"Corporate Debtor"**), which was outstanding and payable towards impending tax liability under Gujarat Value Added Tax Act (**"GVAT Act"**). Section 48 of the GVAT Act stipulates that a first charge would be created in favor of the State on the property of a dealer in respect of any liability arising on account of tax, interest or penalty.

The RP apprised the Appellant that its entire claim had been *waived-off* in the Resolution Plan submitted by the Resolution Applicant, M/s. Kushal Limited. The Appellant challenged the Resolution Plan before the Hon'ble NCLT, Ahmedabad Bench, by contending that the Appellant is a 'Secured Creditor' under the Insolvency & Bankruptcy Code, 2016 (**"IBC"**) and as such, Government dues could not be waived-off. The Hon'ble NCLT, Ahmedabad Bench rejected the application as not maintainable.

On appeal, the Hon'ble NCLAT concurring with the view of the Hon'ble NCLT, observed that the claim was filed belatedly and was therefore time-barred, and that the Appellant did not fall within the definition of 'Secured Creditor' under the IBC, and accordingly dismissed the Appeal by passing the impugned order. The present Appeal was preferred before the Hon'ble Supreme Court under Section 62 of the IBC challenging the impugned order of the Hon'ble NCLAT.

Findings of the Hon'ble Supreme Court:

The Hon'ble Supreme Court reiterated that timeline stipulated under Regulation 12 of IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 for submission of claims is directory and not mandatory, and thereby rejected the view of the Hon'ble NCLT and NCLAT and held that such a rejection on mere delay was unsustainable in law.

After perusal of Sections 30(2), 31(1) and 61(3) of the IBC and by relying on *Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, and *Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Anr.*, the Hon'ble Supreme Court established that the mandatory requirement under Section 30(2) of the IBC, is a *condition precedent* for approval of a Resolution Plan. As such, a Resolution Plan which is not in conformity with Section 30(2) cannot be approved and *may* be rejected using discretionary powers of the Adjudicating Authority derived from Section 31(2) after conscious application of mind to facts and circumstances at hand. The Hon'ble Supreme Court, threw light on the well settled principle of interpretation of statutes and reiterated that the expression "may", if circumstances so demand can be construed as "shall".

The Hon'ble Supreme Court vehemently condemned a Resolution Plan that does not consider statutory dues payable to the State or any legal authority by stating that:

"52. If the Resolution Plan ignores the statutory demands payable to any State Government or a Legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan.

...54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues."

The Hon'ble Supreme Court observed that a security interest could be created by *operation of law*, as under Section 48 of the GVAT Act, and by virtue of such security interest the state government would squarely qualify as a secured creditor for the purpose of GVAT Act and the IBC. The Hon'ble Supreme Court, while observing that there is no inconsistency between Section 48 of the GVAT Act and Section 53 of the IBC or any other provisions of the IBC, held that:

"56. ...Under Section 53(1)(b)(ii) the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date."

Accordingly, the Hon'ble Supreme Court allowed the appeals, set-aside both the impugned order and Resolution Plan, granted liberty to the RP to consider fresh Resolution Plans, and clarified that the observations made in the judgment will not prevent the Resolution Applicant from subsequently submitting an appropriate Resolution Plan.

