

**Creditors cannot initiate proceedings to recover claims which are not part of the approved resolution plan under IBC**

The Hon'ble Supreme Court of India in *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited & Ors. [Civil Appeal No. 8129 of 2019 with WP (Civil) No. 1177 of 2020 and Civil Appeals No. 1550-1554 of 2021]* held that, once resolution plan under the Insolvency & Bankruptcy Code, 2016 ("IBC") is duly approved by adjudicating authority, no person is entitled to initiate or continue any proceedings in respect to claim which is not part of resolution plan and shall stand extinguished.

**Facts:**

In this set of appeals filed by Ghanashyam Mishra & Sons Private Limited, Ultratech Nathdwara Cement Limited, M/S Monnet ISPAT & Energy Limited, and Electrosteel Steels Limited ("**the Appellants**" or "**Resolution Applicants**") wherein, in each of Appellant's matters, the concerned successful resolution plan under the IBC had stipulated that the claims including statutory liabilities and contingent liabilities, to the extent not satisfied or received under the resolution plan will be extinguished.

The Adjudicating Authority in each Appellant's cases had approved the resolution plans exercising jurisdiction under Section 31 of the IBC. Further, the approval of these resolution plans was upheld by the NCLAT/ High Court.

However, the creditors started filing claims/suits/recovery actions against the corporate debtor under a new management. The Statutory Authorities continued to press their demands for outstanding dues.

Being aggrieved, the successful Resolution Applicants has filed these appeals.

**Issues:**

- Whether any creditor, including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by an Adjudicating Authority under Section 31(1) of IBC?
- Whether the amendment to Section 31 of the IBC is clarificatory/declaratory or substantive in nature?

- Whether after approval of resolution plan by the Adjudicating Authority, a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtors, which are not a part of the resolution plan approved by the Adjudicating Authority?

**Held:**

The Hon'ble Supreme Court of India in ***Civil Appeal No. 8129 of 2019 with WP (Civil) No. 1177 of 2020 and Civil Appeals No. 1550-1554 of 2021 dated April 13, 2021*** held as under:

- Noted that, one of the dominant objects of IBC is to see that an attempt is made to revive the corporate debtor and make it a running concern. The scheme of the IBC is to attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate debtor as a going concern until a resolution plan is drawn up. Once the resolution plan is approved, the management is handed over under the plan to the successful applicant so that the corporate debtor can pay back its debts and get back on its feet.
- Observed that, the legislature has given paramount importance to the commercial wisdom of committee of creditors and the scope of judicial review by the Adjudicating Authority is limited to the extent provided under Section 31 of IBC and of the Appellate Authority is limited to the extent provided under of Section 61(3) of the IBC, is no more res integra.
- Stated that, in view of Section 238 of the IBC, the provisions of the IBC will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law and IBC is a complete Code in itself.
- After the amendment to Section 31(1) of the IBC, any debt in respect of the payment of dues arising under any law for the time being in force including the ones owed to the Central Government, any State Government or any local authority, which does not form a part of the approved resolution plan, stand extinguished.
- Further, held that:
  - (i) Once a resolution plan is duly approved by the Adjudicating Authority under Section 31(1) of the IBC, 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.

- (ii) Amendment to Section 31 of the IBC is clarificatory and declaratory in nature and therefore will be effective from the date on which IBC has come into effect.
  - (iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the IBC could be continued.
- The tax authorities are not entitled to recover any claims or claim any debts owed to them from the Corporate Debtor accruing prior to the transfer to Resolution Applicant.

#### **Relevant Provisions:**

#### **Section 31 of the IBC:**

*“Approval of resolution plan-*

*31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which 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.*

*Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.*

*(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*

*(3) After the order of approval under sub-section (1),-*

*(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*

*(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

*(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:*

*Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.”*

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