A RESOLUTION PLAN THAT DOES NOT PROVISION FOR STATUTORY DUES CANNOT BE APPROVED BY THE NCLT UNDER §31 OF THE IBC: *SALES TAX OFFICER V RAINBOW PAPERS LTD*

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Article

Brief Facts

The Corporate Insolvency Resolution Process was initiated against Rainbow Papers by the NCLT on 12 September 2017. Prior to the CIRP order, the Sales Tax Officer had initiated recovery proceedings against Rainbow Papers and attached its property.

After initiation of the CIRP, the IRP issued advertisements inviting the submission of claims by 5 October 2017 and the committee of creditors was formed on 10 October 2017. The Gujarat Sales Tax Officer filed a claim of ₹47.36 Crores on 28 February 2018 for dues under the Gujarat Value Added Tax Act 2003.

Subsequently, a resolution plan was submitted which was objected to by certain creditors. On 22 October 2018, the Sales Tax Officer called upon the RP to confirm the claim that was previously submitted. The RP’s response of the same date clarified that the claim had been treated as *“waived off”*.

This was followed by an application by the Sales Tax Officer to the NCLT objecting to the resolution plan. It was contended that the entire due of ₹47.36 Crores was payable on the basis that the Sales Tax Department was a secured creditor.

Procedural History

The NCLT dismissed the application as being not maintainable while, *inter alia*, observing that the resolution plan had been passed by the CoC by 79.79% votes.

An appeal to the NCLAT was also dismissed, *inter alia*, since:

1. The email of 22 October 2018 was sent well after the submission and approval of the resolution plan in June 2018 and therefore was belated;

2. The claim of the Sales Tax Department does not fall within the fold of a secured creditor under §3(30) r/w §3(31) of the IBC;

3. Considering the scheme of the IBC, the Sales Tax Department cannot claim first charge over the assets of the Corporate Debtor and "*section 48* [GVAT Act] *cannot prevail over Section 53*" of the IBC.

Supreme Court

An appeal was made to the Supreme Court and the Supreme Court set aside the decisions of the NCLT and the NCLAT, *inter alia*, since:

1. As per the unamended Regulation 12(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, read with the IBC, the Sales Tax Department *"was not required to file any claim"*. When read with Regulation 10, the Sales Tax Department "*would only be required to substantiate the claim by production of such materials as might be called for*";

2. The time stipulations for filing of claim are not mandatory, which is also evident from Regulation 14(2) of the IBC;

3. The Sales Tax Department had, in any event, filed a claim on 28 February 2018, which was before the approval of the plan by the CoC;

4. The Sales Tax Department would be a "*secured creditor*" as per §3(30) and §3(31) of the IBC r/w §48 of the GVAT Act;

5. The IRP/RP had access to the books of the corporate Debtor and should have included all liabilities featured therein in the information memorandum. Further, §30(2)(b) of the IBC casts an obligation on the IRP to ensure that a proposed plan confirms with the requirements of §30(2), which includes provisions for payments to operational creditors and which amount cannot be lower than what would be receivable in the case of a liquidation and per the waterfall mechanism in §53 of the IBC;

6. A plan can be approved by the NCLT under §31 only if the requirements under §30(2) have been satisfied and a plan which does not account for statutory dues will fall foul of §30(2); and

7. The committee of 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*".

Conclusion

It appears that the Supreme Court has held that the IRP/RP must include all liabilities/debt of a corporate debtor in the information memorandum and if additional documents are required, then those can be sought from the creditor. Any plan which violates §30(2) cannot be approved by the NCLT.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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