

INSOLVENCY

INSIGHT

Recovery of tax from a buyer holding funds on behalf of the Corporate Debtor does not breach the moratorium under Section 14 of the IBC

Resolution Plan lacking restructuring of the Corporate Debtor, does not constitute a violation of the provisions of IBC.

Management of the CD will not receive advanced copies of the Resolution Plans by other Prospective Resolution Applicants while acting as a Resolution Applicant.



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The Hon'ble NCLAT New Delhi in the case of Commercial Tax Department v. Mr. Mangesh Vitthal Kekre RP of Bhagwan Motors Pvt. Ltd. and Ors. held that the recovery of tax from a buyer or third party holding funds on behalf of the Corporate Debtor, in cases where the Corporate Debtor has not deposited the tax, does not breach the moratorium under Section 14 of the IBC. Additionally, such recovery cannot be classified as a Preferential Transaction under Section 43 of the Code.

This is a case where an appeal was preferred by the Commercial Tax Department after the order of the Adjudicating Authority initiating CIRP against the Corporate Debtor, M/s. Bhagwan Motors Private Limited. The Commercial Tax Department issued a Notice upon VE Commercial Vehicles Limited to pay VAT amount due of M/s. Bhagwan Motors Private Limited. The Resolution Professional filed an application against the VE Commercial Vehicles Limited and Commercial Tax Officers for refund of the aforesaid amount from the Commercial Tax Department.

The Hon'ble NCLAT observed that for Section 43(1) to apply, it must be first determined that the Corporate Debtor has entered into a transaction giving preference. In the given case, no such transaction by the Corporate Debtor was challenged in the application filed by the RP.

Moreover, Section 14 was held to be not applicable as a transaction wherein the party put money with the Commercial Tax Department as a result of a statutory notice can not prima facie be regarded to be a contravention of Section 14 of IBC.

Resolution Plan lacking restructuring of the Corporate Debtor, does not constitute a violation of the provisions of IBC.

The Hon'ble NCLAT, New Delhi in the case of Yogeshkumar Jashwantilal Thakkar and Anr. Vs. George Samuel, RP of Jason Dekor Pvt. Ltd. and Ors, ruled that a Resolution Plan lacking Regulation 37(ba) of the CIRP Regulations, 2016, which pertains to the restructuring of the Corporate Debtor, does not constitute a violation of any legal provisions.

This is a case where the Committee of Creditors (CoC) took a decision to file an Application for Liquidation of the Corporate Debtor there being no viable Resolution Plan. The Respondent No. 3 filed an Application before the Adjudicating Authority seeking direction for consideration of its Plan which was rejected. Comp. App. was filed by the Respondent No. 3, which Appeal was disposed of by this Tribunal setting aside the Order of the Adjudicating Authority and directing for consideration of Revised Resolution Plan. The Resolution Plan of Respondent No. 3 along with first Addendum was considered and was approved. Resolution Professional filed I.A. for approval of the Resolution Plan. The Adjudicating Authority allowed the Application of RP and approved the Plan. Adjudicating Authority held that Resolution Plan is compliant of Section 30(2) of the IBC, and no substantial grounds have been raised for rejecting the Resolution Plan. Certain objections were raised by the Suspended Management to the Resolution Plan which was found to have no substance and hence, this appeal by the Suspended Management.

The Hon'ble NLCAT observed that clause (ba) of Regulation 37 of the CIRP Regulations, 2016, would be added to a Resolution Plan only if it was felt to be necessary. The provision for restructuring the Corporate Debtor is made mandatory only when it is required for the resolution of insolvency. A Plan that does not include such a restructuring clause, therefore, does not violate any legal mandate.

Management of the CD will not receive advanced copies of the Resolution Plans by other Prospective Resolution Applicants while acting as a Resolution Applicant.

The Hon'ble NCLAT, New Delhi in the case of Yashdeep Sharma v. Tara Chand Meenia (RP) and Ors. held that the Suspended Management of the Corporate Debtor will not receive advanced copies of the Resolution Plans by other Prospective Resolution Applicants (PRAs) while also acting as a Resolution Applicant.

The present appeal was filed under Section 61 of IBC against the order dated 13.08.2024 passed by the Adjudicating Authority. By the impugned order, the Adjudicating Authority has approved the resolution plan of Trufalir Buildwell LLP-the Successful Resolution Applicant as placed by the Resolution Professional. Aggrieved by the impugned order, the appeal was preferred by the Appellant who is the suspended management of the Corporate Debtor.

The Hon'ble NCLAT noted that Regulation 39(1A) does not restrict the CoC from entering into negotiations with Resolution Applicants or asking them to increase the value of their Resolution Plans.

Since the Appellant was also a competing Resolution Applicant, making known the Resolution Plans of other PRAs in advance to the Appellant would have given rise to a conflict of interest. This evaluation matrix and Process Document are also issued by the CoC; thus, the CoC would be the most competent authority to interpret and apply these documents for assessing the plans of Resolution Applicants.



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