

Claims for customs dues not forming part of CIRP shall stand extinguished – Delhi HC

16 September 2022



Summary

The Delhi High Court (HC) has held that the Revenue cannot raise the claim for customs duty after the completion of Corporate Insolvency Resolution Process (CIRP) under the Insolvency Bankruptcy Code, 2016 (IBC), if such claim was not raised at the time of invitation of claim of creditors. The HC observed that the Revenue did not lodge their claim even though the demand for the FY 2013-14 was issued before the public notice was floated inviting claims of creditors and before the CIRP was triggered. The petitioner's resolution plan was approved by the National Company Law Appellate Tribunal (NCLAT) in February 2020 and the demand was raised after the said approval in July 2020. Therefore, the HC quashed the order passed by the Additional Director General (DG) (Adjudication) Directorate of Revenue Intelligence (DRI) demanding customs duty along with interest and penalty after the completion of the CIRP.

Facts of the case

- The CIRP has been initiated against the petitioner,¹ and for inviting claims of creditors, a public notice was issued in July 2017.
- The Revenue had issued a show cause notice (SCN) to the petitioner for demanding custom duty along with interest and penalty for financial year 2013-14 in June 2016. However, the Revenue did not file a claim for their dues pertaining to 2013-14 when the public notice was issued in July 2017 for inviting claims from creditors of the petitioner.
- The National Company Law Tribunal (NCLT) had approved the CIRP plan in September 2019 without making a concession in respect of the SCN and the SCN was adjudicated by confirming the demand of the pre-CIRP dues. Further, the appeal was filed before NCLAT which affirmed the resolution plan in February 2020.

- Thereafter, impugned order confirming the demand of customs dues against the petitioner was issued in July 2020.
- Being aggrieved, the petitioner has filed present writ petition² before the Delhi HC.

Delhi HC observations and ruling³:

- **Availability of alternate remedy by way of an appeal:** The HC relied on the judgment⁴ of the Supreme Court (SC) and held that preliminary objection taken by the Revenue, with regard to maintainability of the writ cannot be sustained. It is well established that relegating a party to an alternate remedy is a limitation which the court imposes upon itself, it does not fetter the powers of the court under Article 226 of the Constitution.
- **Existence of demand on date of issue of public notice:** The demand was subsisting on the date when the public notice had been issued in newspapers and on the website inviting claims of the creditors, which included central

¹ Bhushan Power & Steel Ltd.

² W.P.(C) 7248/2020 and CM APPL. 24458/2020

³ Order dated 21 July 2022

⁴ Whirlpool Corporation and ABL International Ltd.

government, state governments and tax authorities.

- **Claims not forming part of CIRP cannot be raised subsequently:** The HC noted that the Revenue did not lodge their claim at the time of inviting claims through a public notice which has been issued in newspapers and on the website. The claims not forming part of the resolution plan cannot be raised subsequently after completion of CIRP.
- **Writ allowed:** If the resolution plan is reprised, it would result in burdening the petitioner with unexpected claims and thus derail it from its path to recovery. Therefore, the HC allowed the writ and held that the demand stands extinguished once a CIRP is approved by the NCLT.

Our comments:

In the case of *Ghanashyam Mishra v. Edelweiss Asset Reconstruction Company Ltd.*, the Apex Court had held that on the date of approval of resolution plan by the adjudicating authority, all such 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.

Recently, in the case of *Sundaresh Bhatt, (Liquidator of ABG Shipyard)*, the Apex Court has held that once the moratorium is declared after the initiation of CIRP under the IBC, no authority has the power to initiate the proceedings during the period of moratorium.

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