



Tax authorities no more a hindrance to the Insolvency Resolution

The Chennai bench of the National Company Law Tribunal in the case of Kiran Global Chem Limited¹ ('Corporate Debtor') has upheld the status of tax authorities as 'Operational Creditors'. It has also directed them not to insist upon payment of past tax dues, when the Corporate Debtor is paying the tax dues in respect of the period, commencing after the Corporate Insolvency Resolution Process ('CIRP') is initiated.

Background

The Resolution Professional of the Corporate Debtor approached the National Company Law Tribunal ('NCLT') seeking access to the Goods and Services Tax ('GST') GST portal of the Corporate Debtor to file GST returns and pay net GST liabilities in respect of period commencing after the CIRP, without making payment of past GST dues.

However, the GST authorities submitted that there is no provision under the GST law which permits acceptance of current dues before clearing past dues.

NCLT ruling

- Although the company goes into the insolvency process, the Corporate Debtor must operate as a going concern during CIRP, for which the Resolution Professional is obligated to pay all the taxes arising during the CIRP period. Section 238 of the Insolvency and Bankruptcy Code, 2016 ('IBC') provides for overriding effect of the IBC provisions over the provisions of other laws in case of any inconsistency.
- The objection of the GST authorities, that in absence of any provision under the GST law, current dues cannot be accepted before clearance of past dues, is not valid. Concurring

¹ MA/1298/2019 in IBA/130/2019



with such an objection would deter the Resolution Professional to run the business of Corporate Debtor on a going concern basis.

- In respect of past tax dues, the tax authorities fall within the ambit of 'Operational Creditor'. Being an 'Operational Creditor', they are entitled to file a claim with the Resolution Professional, rather than insisting upon him to make payment of past tax dues.

Dhruva comments

The ruling is in line with the decision of the National Company Law Appellate Tribunal in case of Synergies Dooray Automotive Limited², wherein it was held that the statutory liabilities, including income-tax and value added tax dues, are operational debt, and the concerned tax authorities would be considered as 'Operational Creditors'. Further, the IBC was recently amended to make the resolution plan approved by the NCLT binding on the government authorities including tax authorities.

Ideally, GST laws should be amended and aligned to IBC provisions to facilitate implementation of the said order as currently there are no provisions permitting authorities to accept current dues before clearing past dues. Interestingly, the recovery provisions under GST law are subject to IBC provisions.

This ruling implies that the Resolution Professional would continue to be liable to pay tax dues which arise post initiation of the CIRP. However, payment of such dues cannot be appropriated by the tax authorities towards past tax dues.

Separately, on an implementation front, the GSTN portal currently does not have any such functionality for bifurcating pre and post-CIRP period. Thus, it would have to be substantially modified for IBC cases considering its impact on payment of net GST (after claiming input tax credits), filing of returns and other compliances.

² Company Appeal (AT) (Insolvency) No. 205 of 2017



ADDRESSES

Mumbai

11th Floor, One IndiaBulls Centre,
Tower 2B, 841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanadnagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart,
Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

Bahrain

WTS Dhruva Consultants
2301, Level 23, P.O. Box No. 60570,
Harbour Tower (East), Bahrain Financial Harbour,
Kingdom of Bahrain
Tel: +973 1663 1921

New York

Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

Silicon Valley, USA

Dhruva Advisors USA, Inc.
5201 Great America Parkway,
Santa Clara, California 95054
Tel: +1-212-220-9494

KEY CONTACTS

Dinesh Kanabar (Mumbai)

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Vishal Gada (Ahmedabad)

vishal.gada@dhruvaadvisors.com

Ajay Rotti (Bengaluru)

ajay.rotti@dhruvaadvisors.com

Vaibhav Gupta (Delhi / NCR)

vaibhav.gupta@dhruvaadvisors.com

K. Venkatachalam (Pune)

k.venkatachalam@dhruvaadvisors.com

Aditya Hans (Kolkata)

aditya.hans@dhruvaadvisors.com

Mahip Gupta (Singapore)

mahip.gupta@dhruvaadvisors.com

Nilesh Ashar (Dubai)

nilesh.ashar@dhruvaadvisors.com

Jilesh Shah (USA)

jilesh.shah@dhruvaadvisors.com



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