

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi -110001

14th April, 2021

Subject: Judgment¹ dated 13th April, 2021 of the Hon’ble Supreme Court of India in the matter of Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors. [Civil Appeal No. 8129 of 2019 with WP (Civil) No. 1177 of 2020 and Civil Appeals No. 1550-1554 of 2021]

Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (Code) reads: “(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.*” The words in bold were inserted by the Amendment Act of 2019 effective from 16th August, 2019. In this set of appeals, the Hon’ble Supreme Court considered whether the claims of the parties, which are not included in the resolution plan, could be agitated by the claimants before the other fora, in view of section 31(1) of the Code, and made some important findings and observations as under:

Sl. No.	Issue	Ruling	Para / Page No.
1	Scheme of the Code	(a) One of the dominant objects of Code is to see to it, that an attempt is made to revive the corporate debtor (CD) and make it a running concern. (b) The scheme of the Code is to attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the CD 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 CD can pay back its debts and get back on its feet. (c) The legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the	54/43 54/44 57/60

¹ Prepared by Legal Affairs Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice, if it intends to take any action or decision using the material covered here.

		<p>Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more <i>res integra</i>.</p> <p>(d) In view of provisions of section 238, the provisions of the Code 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.</p> <p>(e) The Code is a complete Code in itself.</p>	<p>64/65-66</p> <p>86/97</p>
2	<p>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 AA under sub-section (1) of section 31 of the Code?</p>	<p>(a) A bare reading of section 31 makes it abundantly clear that once a resolution plan is approved by the AA, after it is satisfied that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of section 30, it shall be binding on the CD and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the Code is revival of the CD and to make it a running concern.</p> <p>(b) Several details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that it may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the CD is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that it should start with fresh slate on the basis of the resolution plan approved.</p> <p>(c) The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.</p> <p>(d) That once a resolution plan is duly approved by the AA under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the CD and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.</p>	<p>58/60-61</p> <p>61/63-64</p> <p>86/98</p> <p>95/103</p>

3	Whether after approval of resolution plan by the AA, 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 CD, which are not a part of the resolution plan approved by the AA?	<p>(a) After the amendment to section 31(1) of the Code, 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.</p> <p>(b) On the date of approval of resolution plan by the AA, 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.</p> <p>(c) 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 AA grants its approval under section 31 could be continued.</p>	67/66-67 95/103 95/104
4	Whether the amendment to section 31 is clarificatory/declaratory or substantive in nature?	<p>(a) The Statement of Objects and Reasons of the Amendment Bill makes it amply clear that the legislative intent in amending sub-section (1) of section 3 was to clarify, that the resolution plan approved by the AA shall also be binding on the Central Government, any State Government or any local authority to whom a debt is owed in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities.</p> <p>(b) The mischief, which was noticed prior to amendment of section 31 of the Code was, that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by AA; on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position, that once such a resolution plan was approved by the AA, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.</p> <p>(c) The word 'other stakeholders' squarely covers the Central Government, any State Government or any local authorities. The legislature, noticing that on</p>	71/70 77/75-76 87/98-99

		<p>account of obvious omission, certain tax authorities were not abiding by the mandate of Code and continuing with the proceedings, brought out the 2019 amendment so as to cure the said mischief. The 2019 amendment is declaratory and clarificatory in nature and therefore retrospective in operation.</p> <p>(d) A cardinal principle of law is that a statute has to be read as a whole. Harmonious construction of subsection (10) of section 3 of the Code read with subsections (20) and (21) of section 5 thereof would reveal that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority would come within the ambit of ‘operational debt’. The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of ‘operational creditor’ as defined under sub-section (20) of section 5 of the Code. Consequently, a person to whom a debt is owed would be covered by the definition of ‘creditor’ as defined under sub-section (10) of section 3 of the Code. As such, even without the 2019 amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term ‘creditor’ and in any case, by the term ‘other stakeholders’ as provided in subsection (1) of section 31 of the Code.</p> <p>(e) The 2019 amendment is declaratory and clarificatory in nature. Even if 2019 amendment was not effected, still the Central Government, any State Government or any local authority would be bound by the resolution plan, once it is approved by the AA.</p> <p>(f) The amendment to section 31, being clarificatory and declaratory in nature, is effective from the date on which Code came into effect.</p>	<p>91/100-101</p> <p>94/102-103</p> <p>95/104</p>
5	Conclusion	<p>(a) The claims of the parties, which are not included in the resolution plan could be agitated by them before the other fora, as observed by the Appellate Authority, is not permissible.</p> <p>(b) The respondents are not entitled to recover any claims or claim any debts owed to them from the CD accruing prior to the transfer to resolution applicant.</p>	<p>63/65</p> <p>149/139</p>