

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



M/s. Shekhar Resorts Limited (Unit Hotel Orient Taj)
Vs.
Union of India & Ors.

Brief Facts

In the present case, in response to a Section 7 application made by the Union of India & Ors. Insolvency and Bankruptcy Code, 2016, the National Company Law Tribunal, New Delhi, issued an order admitting M/s. Shekhar Resorts Limited (Unit Hotel Orient Taj) (Corporate Debtor) into the corporate insolvency resolution process. On and from September 11, 2018, the corporate insolvency resolution process against the appellant commenced and the appellant was subjected to a moratorium under Section 14 of the IBC on and from September 11, 2018. On, June 4, 2019, the Committee of Creditors (CoC) of the Corporate Debtor accepted the proposed resolution plan from NCJ Infrastructure Private Limited, making it the winning resolution applicant. In accordance with Section 31 of the Code, the resolution professional (RP) subsequently submitted an approved application with the NCLT. NCLT approved the Resolution Plan of the successful Resolution applicant - NCJ Infrastructure Private Limited vide order dated July 24, 2020.

That the appellant – company registered with the Service Tax Department was a company engaged in providing hospitality services. The Service Tax Department conducted investigations as to the evasion of service tax by the appellant and issued show cause notices demanding payment of service tax under various categories such as Accommodation in Hotels, Inn, Guest House, Restaurant Services, Mandap Keeper services, etc.

Decision

The court observed that the appellant was required to pay tax dues of Rs.1,24,28,500/-. Under the Scheme, the appellant/assessee was required to make the payment as per Form No. 3 within a time period of 30 days.

However, in view of the COVID-19 Pandemic, the time to make the payment was extended by the Government up to June 30, 2020.

The appellant explained that the settlement amount under the Scheme, 2019 could not be paid by the appellant before June 30, 2020, due to the legal moratorium imposed upon the company and sought permission to pay the due amount, the request of the appellant was rejected.

The appellant approached the High Court by way of Writ Tax No.328 of 2021. Further, High Court dismissed the said writ petition on the grounds that (i) the High Court shall not issue a direction contrary to the Scheme; (ii) the relief sought cannot be granted as the Designated Committee under the Scheme is not existing.

It is submitted that as per the Resolution Plan accepted during the insolvency proceedings, the Resolution Applicant was required to deposit all statutory dues (including service tax dues) within 6 months from the effective date into an escrow account.

It is further contended that in this case, the effective date is July 24, 2020, the date on which the Resolution Plan was approved by the NCLT. So, Service Tax dues along with other statutory dues were deposited in an escrow account on January 8, 2021, before the expiry of the period of six months.

That in the present case, the moratorium period under the IBC was extended from September 11, 2018, to July 24, 2020, due to the COVID-19 pandemic and the non-functioning of the NCLT.

Making the above submissions it was prayed to allow the present appeal and direct the respondents to appropriate the payment of Rs.1,24,28,500/- towards settlement dues under the Scheme 2019 and that a discharge certificate be issued to the appellant accordingly. Final Form No. 3 determining the settlement amount which the applicant was required to deposit within a period of one month from the date of receipt of the final determination – Form No.3. That the appellant was issued the Form No. 3 on February 25, 2020, and was required to pay the settlement dues on or before March 25, 2020. However, in view of the COVID-19 Pandemic, the Government extended the time up to June 30, 2020. Therefore, the appellant was required to deposit the settlement dues on or before June 30, 2020.

It is a case where the appellant was unable to make the payment due to the legal impediment and the bar to make the payment during the period of moratorium. It was found that the appellant was otherwise entitled to the benefit under the Scheme as the Form No.1 submitted by the appellant has

been accepted, the Form No.3 determining the settlement amount has been issued, the High Court has erred in refusing to grant any relief to the appellant as prayed.

In view of the above and for the reasons stated above, the present appeal was allowed. The impugned judgment and order passed by the High Court are hereby quashed and set aside. It is directed that the payment of Rs.1,24,28,500/- already deposited by the appellant be appropriated towards settlement dues under “Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019” and the appellant be issued a discharge certificate. The present appeal was allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Link of the Order

<https://ibbi.gov.in/uploads/order/3da5355f1076f27a1f3af6e3067eb588.pdf>



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