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Known statutory claims survive Insolvency and Bankruptcy Code, 2016 resolution plan, if not disclosed

On April 2, 2025, the Madurai Bench of the Madras High Court ("**Madras HC**"), in *M/s. Empee Distilleries Limited vs. The Superintending Engineer and Ors.*¹, delivered a pivotal ruling on the interplay between the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and statutory claims under litigation. The Madras HC held that a claim pending before a statutory appellate body is not extinguished upon approval of a resolution plan by the National Company Law Tribunal ("**NCLT**") if it was known but not disclosed during the Corporate Insolvency Resolution Process ("**CIRP**"). This decision underscores the duty of the Interim Resolution Professional ("**IRP**") and promoters to ensure full transparency regarding known debts.

Brief facts

1. M/s. Empee Distilleries Limited ("**Empee**") underwent CIRP, with a resolution plan approved by the NCLT on January 20, 2020, for INR 475 crore (Indian Rupees four hundred and seventy-five crore), covering secured creditors, statutory dues, and unsecured creditors under the waterfall mechanism.
2. The Tamil Nadu Generation and Distribution Corporation Limited ("**TANGEDCO**"), a statutory creditor, claimed INR 1,23,69,195 (Indian Rupees one crore twenty-three lakh, sixty-nine thousand, one hundred and ninety-five) in electricity dues, including INR 1,14,80,039 (Indian Rupees one crore fourteen lakh, eighty thousand and thirty-nine) under litigation in a writ petition (W.P. No. 26553 of 2013) pending since 2013, which was known to Empee's promoters and the IRP.
3. TANGEDCO did not participate in the CIRP, and its claim was not included in the resolution plan. Post-approval, the new management sought electricity reconnection, which TANGEDCO denied due to unpaid dues.
4. Empee challenged TANGEDCO's demand *via* a writ petition, arguing that the claim was extinguished under the IBC's 'clean slate theory'. The single judge ruled that while TANGEDCO could not enforce the claim directly, it could refuse reconnection under the Tamil Nadu Electricity Supply Code.
5. Empee appealed, leading to the present intra-court ruling by the Madras HC.

¹ W.A (MD) No. 1426 of 2022

Issue

Does a statutory claim under litigation, known but not disclosed during the CIRP, get extinguished upon approval of a resolution plan by the NCLT?

Findings and analysis

The Madras HC, after reviewing IBC provisions and judicial precedents, held as follows:

1. the pending writ petition over TANGEDCO's INR 1,14,80,039 (Indian Rupees one crore fourteen lakh, eighty thousand and thirty-nine) claim was known to Empee's promoters and the IRP but was not disclosed to the committee of creditors. This omission breached the IRP's statutory duty, preventing the claim's extinguishment;
2. citing *Ghanashyam Mishra and Sons (P) Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd.*², the court affirmed that the 'clean slate theory' (where claims not in the resolution plan are extinguished), applies only when all known debts are disclosed. Non-disclosure of a known, *sub judice* claim undermines this principle;
3. the court harmonized *State Tax Officer vs. Rainbow Papers Limited*³ ("**Rainbow Papers**"), which treated statutory dues as secured debts, with *Paschim Anchal Vidyut Vitran Nigam Limited. vs. Raman Ispat Private Limited*⁴, clarifying that Rainbow Papers applies narrowly and does not override the IBC's disclosure requirements. Here, the focus was on procedural lapse, not the nature of the dues; and
4. due to the IRP's failure to disclose the pending claim, TANGEDCO's demand remained enforceable as a condition for reconnection, subject to the litigation's outcome. The IRP failed to gather and present information about the pending statutory dues, breaching IBC mandates. The court rejected Empee's argument that TANGEDCO's non-participation in the CIRP extinguished the claim, emphasizing that known debts cannot be excluded by silence.

Conclusion

The 'clean slate theory', or the 'fresh start theory', in the context of IBC, means that once a resolution plan for a financially distressed company is approved, the company is considered to have a fresh start, free from all past liabilities except those specifically addressed in the approved plan. This judgment reinforces that the IBC's 'clean slate theory' hinges on transparency. Known statutory claims, including those under litigation, survive resolution plan approval if not disclosed during the CIRP. It places a heightened onus on IRPs and promoters to diligently report all liabilities, protecting creditors like TANGEDCO from being prejudiced by procedural lapses. The decision clarifies that while the IBC overrides inconsistent laws under Section 238, this protection does not extend to shielding non-disclosure of known debts.

² (2021) 9 SCC 657

³ (2022) SCC Online SC 1162

⁴ (2023 SCC OnLine SC 842)

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