

## INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

The Telangana HC has pronounced a landmark judgment in the case of Sirpur Paper Mills Pvt Ltd vs. Union of India, {14798 of 2021 03.09.2021 } addressing a peculiar issue that arise post approval of Resolution Plan ("Plan").

A Plan was approved by NCLT on 19.07.2018. The RP filed Income Tax return for the AY 2017-18 on 07.11.2017 and for which the Income Tax Department sent 3 notices all after approval of plan.

Successful Resolution Applicant (SRA) filed Writ Petition that once a Plan is approved u/s. 31(1) of IBC, no claim shall be entertained. Applicant cannot be subjected to a new claim/s. The Department being an OC failed to submit their claims before the RP, that the scope of the Code is to ensures revival of distressed entities and in the event any new un-registered claims arose by other Governmental Authorities after the approval of Plan shall hamper the purpose of the IBC and violate section 238 of IBC.

Contentions of the Department The that they do not come under the preview of OC They further explained that claim was not filed as the CD was a loss making entity and no monies was recoverable. That they were not in receipt of the Plan nor any opportunity was granted to them for participation in Plan formation and so it is not binding on them. The Department also contended that the impugned notices cannot be barred as they only seek certain information to establish the veracity and correctness of business losses, unabsorbed depreciation and TDS refund which shall be set off against future profits. Therefore, these notices do not conflict with the approved Plan and so the overriding effect of sec 238 does come into play.

Court held that what the resolution plan provides is in conformity with the law laid down by the SC in the case of Essar Steel India Limited and Ghanashyam Mishra stating that on and from the date of approval of the resolution plan by the Tribunal, the same would prevail over all the claims filed by creditors. Therefore the claim filed by the Department or any other authority which are outside the Plan for the period covered by the resolution plan would stand extinguished.