



## STATUS OF STATUTORY DUES UNDER INSOLVENCY AND BANKRUPTCY CODE, 2019

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### ABSTRACT

*The Insolvency and Bankruptcy Code, 2016 is a major reform in the world of corporate law. It consolidates all the provisions in different acts into one single piece of legislation making the insolvency procedure more efficient, methodical and time saving. It has provided immense relief to the corporations that are drowning in debt. The set time frame and streamlined Corporate Insolvency Resolution Process (CIRP) are two of the key highlights of this reform. But, the Code still has plenty of shortcomings with regards to its framework and implementation.*

*One of the major concerns through the entire process is the management of overdue taxes and fees owed to statutory authorities by the insolvent company. The statutory dues act as Public Revenue Receipts in the government budget which helps in the growth and development of the country. In most resolution plans the importance in repayment of statutory dues is scarce to none. Even various courts and tribunals approve and authorize it. But, its non-payment leads to a serious blow to the country's finances. Crores of rupees have been waived off due to sheer negligence. Since the implementation of the legislation, there have been many debates and issues raised which are yet to be answered by Insolvency and Bankruptcy Board of India or the courts.*

*This article is an attempt to address the concerning complication which effects the*

*country at large. Through the various loopholes, both corporations and the statutory authorities have been lax when it came to paying back the dues. Here various judgments and case studies have been analyzed to understand and comprehend the legal status that statutory dues hold in Insolvency Law.*

### Research Objectives:

- To analyze the loopholes in the Insolvency and Bankruptcy Code, 2016 which allow the non-payment of Statutory Dues.
- To study the legal status of Statutory dues as per the National Company Law Tribunal (NCLT) and National Company Law Appeal Tribunal (NCLAT).
- To understand the consequences of the non-payment of the Statutory Dues.

### Research Methodology:

- Analyzing and interpreting various case laws
- Understanding the Corporate Insolvency Resolution Process to find the loopholes in the Insolvency and Bankruptcy Code.

### INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 is an enactment that consolidates all the frame works into one single law for insolvency and bankruptcy. This enactment was a major reform in the legal jurisprudence and fills a lacuna in Commercial/Business Laws. It was enacted on 28<sup>th</sup> May, 2016 and came into effect in December, 2016. The Code aimed to address the problem of the sick units or Non-Performing Assets (NPAs)



in a time bound manner. Lokesh Vasudevan, a Partner at Brahmayya & Co, said, “The Code is a beneficial legislation which should have put the corporate debtor back on its feet and not be treated as a mere recovery legislation for creditors. Recovery in case of resolution is fixed and unchangeable, whereas, realizations out of liquidation are uncertain, time-consuming and stressful.”<sup>1</sup>

The Insolvency and Bankruptcy Code lays down different resolution procedures for corporate individuals as well as individuals and partnership firms to either sell the NPAs or to liquidate them in a timely manner. It aims to maximize the value of the insolvent entity so as to promote entrepreneurship and credit availability while balancing the interests of the stakeholders.

The Code also established the Insolvency and Bankruptcy Board of India (IBBI) as the regulatory authority over all cases and laws relating to insolvency and bankruptcy. It looks over all Insolvency Resolution Professionals, Insolvency Professional Agencies and Information Utilities. It helps to implement the provisions of IBC and helps to amend the laws to suit the current challenges.

The following are the objectives of The Insolvency and Bankruptcy Code, 2016:

- To smoothen the legalities with regards to all insolvency and bankruptcy cases
- To stimulate the attitude of entrepreneurship and development in the country through easy credit availability in the market

<sup>1</sup> V Rishi Kumar *Insolvency proceedings: For each revival under IBC, four firms go under* The Hindu (June 28<sup>th</sup>, 2019) <https://www.thehindubusinessline.com/money-and->

- To resolve insolvency and bankruptcy cases in a time bound manner
- To make one single legal framework and eliminate the conflict of laws
- To balance the interests of all stakeholders and prioritize government dues over other secured dues
- To establish Insolvency and Bankruptcy Board of India as the regulatory body for insolvency and bankruptcy law

### CORPORATE INSOLVENCY RESOLUTION PROCESS

Corporate Insolvency Resolution Process (CIRP) is the procedure through which the corporate person, partnership firm or an individual undergoes the insolvency procedure. It is the debt recovery mechanism for the creditors while acting as a way out from messy debt repayment structures for the bleeding companies and NPAs. After making an application in the NCLT, the CIRP is initiated. First it is established whether the person who has defaulted is capable to repay the dues or not. If not, then the company is either restructured or liquidated.

Sec 3(8) defines a Corporate Debtor as “a corporate person who owes a debt to any person.”<sup>2</sup> This is the person who is to be revived or liquidated.

Sec 3(10) defines a creditor as “any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor

[banking/insolvency-proceedings-for-each-revival-under-ibc-four-firms-go-under/article28211892.ece](https://www.thehindubusinessline.com/money-and-banking/insolvency-proceedings-for-each-revival-under-ibc-four-firms-go-under/article28211892.ece)

<sup>2</sup> Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India).



*and a decree holder.*<sup>3</sup> Through this definition it may be understood that there are two basic categories of creditors –

#### 1. FINANCIAL CREDITORS

Financial Creditors refers to *any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.*<sup>4</sup> Their relationship with the debtor is financial in nature. The contract between the two entities is purely a financial contract, like loans and debt security along with the requisite interest (if any) and hence is a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

#### 2. OPERATIONAL CREDITORS

Operational Creditors refers to *“a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”*<sup>5</sup> The operational debt includes providing a good or service to the debtor or any monetary dues arising out of the existing laws which is to be paid to either the Central Government, State Government or to any local authority.

The process starts with the creditors or the corporate debtor, itself, filing an application with the National Company Law Tribunal (NCLT). The creditors have to prove to the court that a debt exceeding Rs. 1 lakh is due and wasn't paid even after giving a 14 day notice period. The NCLT has to pass an order either admitted or denying the application. If admitted, then the corporate debtor is accepted into CIRP.

Once entered into CIRP, firstly an Interim Resolution Professional is appointed. He takes over the company and the Board of Directors cease to have any control over the activities of the company. A moratorium is placed which prohibits the following:

1. Continuance or inception of any legal matters against the corporate debtor
2. Transfer of Assets
3. Execution of security interest
4. Discontinuance or termination of the supply of goods and services

Next, the Interim Resolution Professional summons all the claims by various corporate debtors. He maintains a record for all of them and verifies the claims. The Liquidator further verifies and revalues all the claims. The Interim Resolution Professional then constitutes the Committee of Creditors.<sup>6</sup>

In the first meeting, the CoC appoints a permanent Resolution Professional for the remaining of the CIRP who may or may not be the Interim Resolution Professional. The CoC is in charge of considering different Resolution Plans for restructuring the corporation and admit one within 180 days since the initiation of CIRP. The accepted Resolution Plan is then put forward to the NCLT for approval. If approved, the conditions proposed in the plan become binding on all creditors and the corporation. If not, the corporation is then liquidated. Through this entire process, one of the main creditors become statutory authorities that impose various taxes and fees on the corporations. These taxes and fees are a result of the enforcement of statutes. They count as revenue receipts to the government budget.

<sup>3</sup> Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India).

<sup>4</sup> Sec 5(7) Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India).

<sup>5</sup> Sec 5(21) Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India).

<sup>6</sup> Sec 12 (2) Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India).



The amounts so procured are used for the expenditures of the state for growth and development of the country. Most of the times there are major defaults on part of the corporations and the debt piles up to crores and crores of rupees.

Through this paper, the legal status of statutory dues is analyzed along with the monetary and moral impacts of the leeway provided to corporations and statutory authorities alike. Firstly, the landmark judgment of Pr. Director General of Income Tax V. M/S Synergies Dooray Automotive<sup>7</sup> is analyzed whether statutory dues could come under the category of operational creditors. Next, the involvement of statutory authorities in the Committee of Creditors is criticized. Finally, other problems with regards to statutory authorities is discussed.

### STATUTORY DUES AS OPERATIONAL DEBTS

One of the major challenges in the sphere of Insolvency Law is the status and position of statutory dues. The question which is asked time and time again is under which category of debts do statutory debts fall under? The answer to this plays an importance role in determining the rank the debts hold at the time of repayment or liquidation. On 20<sup>th</sup> March, 2019, National Law Company Appeal Tribunal put the discussion to rest. It held that statutory dues come under the umbrella of operational debts.

Over the years various statutory departments including the income tax and other service tax departments of the various states had filed appeals against the decisions of various benches of National Company Law Tribunals (NCLT). The departments stated that the NCLTs had approved various resolution plans which waived huge amounts of debts in favor of quick resolution and restructuring of the companies.

Collectively addressed by NCLAT, it pronounced its judgment through Pr. Director General of Income Tax V. M/S Synergies Doorway Automotive<sup>8</sup>. The bench stated that there were two questions which had to be addressed to get to the crux of the matter<sup>9</sup>

1. Whether the 'Income Tax', 'Value Added Tax' or other statutory dues, such as 'Municipal Tax', 'Excise Duty', etc. come within the meaning of 'Operational Debt' or not?
2. Whether the Central Government, the State Government or the legal authority having statutory claim, come within the meaning of 'Operational Creditors'?

Firstly, they determined that Income Tax, Value Added Tax and other statutory dues do come within the meaning of Operational Debt. For this, the Bench along with the Amicus Curiae interpreted the bare reading of Sec 5(21)<sup>10</sup> and the Supreme Court judgment of Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors<sup>11</sup>.

The main argument with respect to the definition of Operational Debt is whether the 'or' should be read as 'and' i.e. a conjunctive

<sup>7</sup> Company Appeal (AT) (Insolvency) No. 205 of 2017 – 20.03.2019.

<sup>8</sup> Supra.

<sup>9</sup> ICSI Institute for Insolvency Professionals, IBC – Learning Curve(31), (23rd March, 2019) [http://icsiip.com/Portals/0/learning\\_curve/31.pdf](http://icsiip.com/Portals/0/learning_curve/31.pdf)

<sup>10</sup> Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India)

<sup>11</sup> W.P.(C.) No. 99/2018 – 25.01.2019.



or whether the 'or' disjoins the first part to the second. Sec 5(21) defines Operational Debt as follows:

*“Operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment 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.”*

The first part is “a claim in respect of the provision of goods or services” while the second part is “or a debt in respect of the repayment of dues arising under any law”.

The 'or' in between the two parts is the source of contention. The statutory authorities, backed by the Amicus Curiae, stated that the 'or' should be read as 'and' since that would refer to operational debts arise from the provision of goods and services. Whereas, if the word 'or' is used to disjoin the two parts, an entirely new category of operational debts would arise which is not related to the provision of goods and services.<sup>12</sup>

The bench also referred to the Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors<sup>13</sup> judgment which stated in Para 23:

*“23. ...On the other hand, an ‘operational debt’ would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.”*

<sup>12</sup> Aaditya Gambhir, *Synergies Dooray Automotive – Statutory Dues under the IBC* (April 9, 2019) <https://www.ircl.in/single-post/2019/04/09/Synergies-Dooray-Automotive-%E2%80%93-Statutory-Dues-under-the-IBC>

However, the NCLAT used plain reading of Sec 5(21) and quoted authorities<sup>14</sup> to state that interpreting 'or' as 'and' should be done only in extraordinary circumstances and this definition doesn't fall into that category.

NCLAT (in Para 29) held that operational debts refer to those debts that arise only when the company is actually producing some goods or providing some services. As the statutory dues arise only when the company is actually operating, there lies a direct connection between the two. Therefore it was established that statutory dues would be considered as Operational Debt.

*“29. ‘Operational Debt’ in normal course means a debt arising during the operation of the Company (‘Corporate Debtor’). The ‘goods’ and ‘services’ including employment are required to keep the Company (‘Corporate Debtor’) operational as a going concern. If the Company (‘Corporate Debtor’) is operational and remains a going concern, only in such case, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the ‘Income Tax’, ‘Value Added Tax’ and other statutory dues arising out of the existing law, arises when the Company is operational, we hold such statutory dues has direct nexus with operation of the Company. For the said reason also, we hold that all statutory dues including ‘Income Tax’, ‘Value Added Tax’ etc. come within the meaning of ‘Operational Debt’.”*

<sup>13</sup> *Supra*.

<sup>14</sup> *Municipal Corpn. Of Delhi v. Tek Chand Bhatia*—(1980) 1 SCC 158.



Hence, automatically the Income Tax Department of the Central Government and the Sales Tax Department(s) of the State Government(s) and local authorities, who are entitled for dues are 'Operational Creditor' within the meaning of Sec5(20)<sup>15</sup>.

While this verdict is landmark since it actually substantiates statutory dues in the entire process and the fact that the statutory authorities can now initiate CIRP against the corporate debtor<sup>16</sup>, there are many glaring problems too. The first shall be the fact that by being classified as operational creditors the authorities now hold an extremely passive role in the entire process. Furthermore, there are many situations where albeit the company is not in operation (but still in legal existence), tax liabilities and statutory fees may be applicable. Lastly, there are very few similarities between trade and commerce related Operational Creditors and statutory authorities.

#### **WAIVER OF STATUTORY DUES AND ITS IMPACT ON PUBLIC MONEY**

The Insolvency and Bankruptcy Code, 2016 faces another obstacle, which is extremely

human and non-technical in nature – the lax and careless attitude of statutory authorities and the misuse of the laws to find loopholes by the Companies. Through Insolvency process, statutory authorities can receive huge sums of money which can be greatly beneficial to the general public. But, unfortunately, reports tend to show that certain well place rich elite are trying to use this law for hostile takeover of major stressed Companies, while aggravating the situation of non-payment of bank loans, refusing to pay genuine dues of the Operational Creditors and most importantly trying to rob the Government of their statutory dues. Hence this has been thus noted as a new area of development of Insolvency Law with major concerns.

Apart from the Insolvency Code, Sec 35AA<sup>17</sup> and 35AB<sup>18</sup> of the Banking Regulation Act, 1949 were amended to permit Reserve Bank of India to issue notifications for taking large NPA Accounts to Insolvency Law. In this regard, RBI to issue notifications for taking large NPA Accounts to Insolvency Law - one of them being a Notification dated 13/6/17<sup>19</sup>

<sup>15</sup> Sec 5(20) Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India)

Operational Creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

<sup>16</sup> Aashish Aryan, *I-T department, other tax agencies can initiate insolvency*, Business Standard, (March 21<sup>st</sup>, 2019) NCLAT [https://www.business-standard.com/article/economy-policy/i-t-department-other-tax-agencies-can-initiate-insolvency-nclat-119032001108\\_1.html](https://www.business-standard.com/article/economy-policy/i-t-department-other-tax-agencies-can-initiate-insolvency-nclat-119032001108_1.html).

<sup>17</sup> The Banking Regulation (Amendment) Act, 2017, Act No. 30 Of 2017 (India)

35AA. The Central Government may, by order, authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default,

under the provisions of the Insolvency and Bankruptcy Code, 2016.

<sup>18</sup> The Banking Regulation (Amendment) Act, 2017, Act No. 30 Of 2017 (India)

35AB (1) Without prejudice to the provisions of section 35A, the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets. (2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.

<sup>19</sup> Pratik Bhakta, Saikat Das, *Identified: 12 insolvent accounts responsible for 25% of toxic assets on bank balance sheet*, Economic Times, (June 14<sup>th</sup>, 2017) <https://economictimes.indiatimes.com/news/economy/policy/rbi-identifies-12-accounts-with-25-per-cent->



in which large 12 accounts were named as Major Insolvent Accounts representing various Companies. Most of these Companies have gone through the Resolution Process and have been taken over by various Groups. Unfortunately, hardly any information is available regarding the Insolvency Process of most of these Companies.

The Statutory Authorities, including the Revenue Departments, as well as Statutory Body under Insolvency Code being the Central Government and IBBI Board, have failed to perform their duties properly. Further, the conduct of the Public Sector Banks and the Resolution Professional appointed by them is also highly susceptible, because the proceeding are being conducted in a manner that would lead to windfall gains to certain rich and influential private parties, without trying to protect the interests of banks, operational creditors, and most importantly – the Statutory Dues.

One such cases is the case of Insolvency of a major construction company of India – Jaypee Infratech Ltd. It has an outstanding debt of nearly Rs. 9800 crores out of which Rs. 4,334 crores pertain to IDBI Bank, who filed an Insolvency petition against Jaypee Infratech Ltd. before NCLT, Allahabad.<sup>20</sup> Corporate Insolvency Resolution Process was triggered in the matter of Jaypee

Infratech Ltd. In August 2017 an Interim Resolution Professional (IRP) was appointed to manage the Company's business.

Amongst the operational creditors' due of approximately Rs. 9,712, Income Tax dues are to the tune of Rs. 3,334 crores (34.33% of Operational Dues), the dues of Yamuna Expressway Industrial Development Authority (YEIDA) are Rs. 6,112 crores (62.93% of Operational Dues) and other operational creditors' dues are to the tune of Rs. 267 crores.<sup>21</sup>

It has been ascertained that the IRP has admitted claims worth Rs. 464 crores only out of total operational debt of approximately Rs. 9,712 crores (4.77% of the claimed amount). It is a settled law that the IRP cannot adjudicate upon the claim and has to admit the entire claim. Further, it is shocking that the statutory authorities do not seem to have made any representations/objections that their dues were not admitted in full.

Various parties showed interest in taking over debt-ridden Jaypee Infratech Ltd. It is understood that National Building Construction Corporation Ltd. (NBCC), in its revised resolution plan, has also sought many reliefs and concessions including consent from Yamuna Express Industrial Development Authority (YEIDA), if Jaypee Group transfers land and Yamuna Expressway to separate special purpose

of-bank-npas-for-insolvency/articleshow/59130725.cms?from=mdr

<sup>20</sup> IBDI Bank Ltd. v. Jaypee Infratech Ltd. Company Petition (IB) 77/ALD/2017

<sup>21</sup> Press Trust of India Ltd., *NBCC seeks various concessions in resolution plan for Jaypee Infratech*, The Economic Times, (May 7th, 2019) <https://m.economictimes.com/industry/services/property/-cstruction/jaypee-infratech-insolvency-nbcc-offers-rs-20-crore-to-operational-creditors/articleshow/69220778.cms>

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<sup>22</sup> Press Trust of India Ltd., *NBCC seeks various concessions in resolution plan for Jaypee Infratech*, The Economic Times, (May 7th, 2019) <https://m.economictimes.com/industry/services/property/-cstruction/jaypee-infratech-insolvency-nbcc-offers-rs-20-crore-to-operational-creditors/articleshow/69220778.cms>



vehicles (SPVs) and has offered to pay Rs. 20 crores against over Rs. 9,712 crores dues of operational creditors (4.31% of the admitted amount and 0.21% of the claimed amount), including the income tax department and Yamuna Express Industrial Development Authority (YEIDA).<sup>23</sup>

On transfer of land to Jaypee Infratech from YEIDA as a part of concession agreement, NBCC has stated in its resolution plan that Income Tax department has been making an addition to the income of about Rs. 2,950 on annual basis, which could result in a tax liability of Rs. 33,000, in its entirety, should be extinguished upon approval of this plan.<sup>24</sup>

It may be noted that the claims of Statutory Authorities are evidently more than 10% of the total debt of the company. In theory, they should have a right of participation in the Committee of Creditors meeting under Section 24<sup>25</sup> of the Insolvency Code, but they cannot be part of the C.O.C. as a result of being classified as Operational Creditors. The statutory authorities cannot participate or make any representations before C.O.C. regarding their dues. But they do not even record any objection to such waiver of dues, not even seeking a hearing to them, much less pressing for any requirement of their consent in most of the cases.

If the entire due is repaid to the Income Tax department and YEIDA, then the statutory

authorities shall receive Rs. 9,446 crores. This large amount would have been more than enough to fund the government initiative to digitize education delivery in state run schools.<sup>26</sup> If we consider that the amount due to the Income Tax department is in the same proportion as the claimed figures (while YEIDA agrees to waiver as stated in the Resolution Plan presented by NBCC), then the Income Tax department shall only receive 34.33% of Rs.20 crores i.e. Rs. 6.866 crores. 6 crores is the amount allocated for the preparations of Natural Resource inventory for micro-level agricultural planning in three potential districts of Arunachal Pradesh by the Arunachal Pradesh's State Government.

It is also interesting to note that neither the Central government nor the IBBI Board, has made any rules in this regard. The Central Board of Direct Taxes or Central Board of Indirect Taxes have also not issued any rules, circulars or standing orders in order to clarify as to how the Government Authorities shall participate in the CIRP Process and hearings of a Resolution Plan, to safeguard the interest of public money in form of Statutory Dues. In absence of such rules, a walkover is given to the high and mighty people who cause such huge losses to the Government.

Both NCLT and NCLAT Rules were framed primarily to deal with matters under the Companies Act, 2013. Hence there is a serious lacuna in the said rules to deal with

<sup>23</sup> Press Trust of India Ltd., *NBCC seeks various concessions in resolution plan for Jaypee Infratech*, The Economic Times, (May 7th, 2019) <https://m.economictimes.com/industry/services/property/-construction/jaypee-infratech-insolvency-nbcc-offers-rs-20-crore-to-operational-creditors/articleshow/69220778.cms>

<sup>24</sup> Supra

<sup>25</sup> Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India)

Sec 24 (1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.

<sup>26</sup>Prashant K. Nanda, *Centre launches ₹9,000 crores plan to digitize education delivery*, Live Mint, (20<sup>th</sup> February, 2019)

<https://www.livemint.com/news/india/centre-launches-9-000-crore-plan-to-digitize-education-delivery-1550683075713.html>



the process of approving the Resolution Plans and more particularly the mode, the method, the manner of giving notice to, seeking reply from and giving hearing to statutory authorities and Operational Creditors prior to approval of Resolution Plan.

This lacuna and loophole in the process has been conveniently allowed to develop by the Central Government, Ministry of Finance, Ministry of Corporate Affairs, IBBI Board, Resolution Professionals and Committee of Creditors in order to enable the proceedings to carry out behind the back of the statutory authorities so that no issue is raised in the public fore or in the Department where they are being given nearly zero payment, after the takeover of the Company,

Statutory Authorities coerce the taxpayers even for dues of Rs. 1,000 and the Ministries fight and challenge the disability pension matters, day in and day out right up to the Supreme Court, however, in the cases such as above example, involving a huge sum of Statutory Dues running in thousands of crores, the authorities have absolutely no concern even if such statutory dues are entirely wiped out due to their inaction and culpable negligence.

When any Application is filed before any authority and the Order is passed by the said Authority would be binding on any third person then that third person, whether it is a Statutory Authority or a private person. Such third persons are ought to have been given notice and should have been allowed to file

their consent or objections. But they do not seem to hold any objection and if they do, they don't record or present them in front of the concerning authorities. Even the waivers sought by entities in the Resolution Plan is in the public domain and cannot be said to be hidden from the Statutory Authorities but they neglect to look and check for the same which results in forfeiture of crores of rupees.

The entity seeking waiver of tax dues and acquiring the Corporate Debtor at paltry amounts cannot be permitted to be enriched at the cost of tax payers and moreover, the money collected by the Company from the consumers towards tax belongs to the Government, and the same cannot be withheld under any circumstances.

As per Section 30 (2) (e)<sup>27</sup> of the Code, a resolution plan shall not contravene any law for the time being in force. Any resolution plan which seeks waiver or the scale down of statutory dues, without hearing the statutory authorities and without ensuring their participation in accordance with the Code, is illegal and hit by Section 30 (2) (e). But, despite thereof, NCLTs continue to approve resolution plans which stipulate waiver or extinguishment of statutory dues as done in the matters of Bhushan Steel Ltd., Star Argo Marine Exports Pvt. Ltd., Ved Cellulose Ltd. Mor Farms Pvt Ltd and JEKPL Pvt. Ltd. etc.

### **OTHER MAJOR CONCERNS REGARDING STATUTORY DUES IN CORPORATE INSOLVENCY RESOLUTION PROCESS**

(e) Does not contravene any of the provisions of the law for the time being in force.

<sup>27</sup> Insolvency and Bankruptcy Code, 2016, Act No.31 of 2016 (India).

Sec 30(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—



One of the other major problems faced during the Resolution Process is the tax implications on the entire process. CIRP is an expensive and exhaustive process from the stand point of both, the acquirer and the Corporate Debtor. It a question put before the Code whether the expenses incurred from such activities will be liable for taxation, specifically Income Tax. While any specific provision regarding the same to clear it out, judicial precedents<sup>28</sup> support classification of restructuring expenses as revenue expenditure. But still, any amendments or clarifications from IBBI Board or the Income Tax Department of the Central Government is sought to clarify the same.

Another issue brought to light may be the payment of tax dues in the event of the liquidation of the company. While the priority of payment in the event of restructuring of the company is quite low, upon liquidation, the authorities may seek preferential treatment. In the case of *Leo Edibles & Fat vs. Tax Recovery Officer*<sup>29</sup>, the Andhra Pradesh and Telengana High Court has upheld the fact that the Income Tax Department may not any priority. The same applies for Indirect Tax Dues as well.

### CONCLUSION

While the Insolvency and Bankruptcy Code, 2016 is a landmark legislation bringing about a huge change in Insolvency Law, there are various amendments and clarifications that have to be made. To make the Code as effective as possible in the real world, many points of contentions need to be straightened out by the Insolvency and Bankruptcy Board of India or any other authroity. One of them is the how overdue statutory dues and fees are

to be handled during the Corporate Insolvency Resolution Process.

Companies and corporations use the society's resources to establish and make a name for themselves. In the event of insolvency, where they lose the public's trust, it is pertinent that they should make up for it. This can be done by paying the government its dues.

However, in the past 3 years, there have been many instances and cases where statutory dues are waived off by the Resolution Professional, the acquirer and also the courts and tribunals. These waivers can play a major part in the government budget and can be a major source of government income down the line. But, since they are waived, the public is being robbed off from living in a welfare state.

One of the amendments I would like to suggest is that by elevating the status and rank of statutory authorities in the Committee of Creditors and/or in the priority of repayment, huge amounts of money can be procured and used for the country. Also, separate departments should be established inside the tax and other local authorities to ensure the compliance in repayment of the outstanding taxes, debts and fees.

It is pertinent that statutory authorities play a much bigger role in the entire process. By the way of this, the taxpayer's liability will automatically decrease while the country continues to grow and thrive in today's world.

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<sup>28</sup> PCIT vs. Akzo Nobel India Ltd [2018] 94 taxmann 38 [Kol]

<sup>29</sup> [2018] 99 taxmann 195