

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

16th January 2023

Subject: Judgment¹ dated 5th January 2023 in the matter of M/s. Shekhar Resorts Limited (Unit Hotel Orient Taj) Vs. Union of India &Ors. [Civil Appeal N0.8957 of 2022]

1. In this case, while CIRP was ongoing against M/s. Shekhar Resorts Limited (CD), the government introduced Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019(SVLDRS) to settle legacy disputes of Central Excise and Service Tax dues under section 125 of the Finance Act. The last extended date of payment of dues under the SVLDRS was 30.06.2020.
2. The insolvency proceedings concluded on 24.07.2020. After the completion of CIRP, CD filed an application for issuance of discharge certificate before Assistant Commissioner (AC), which was rejected on the ground that the time period SVLDRS had already lapsed.
3. CD preferred an appeal against the order of AC before Allahabad High Court for extension of time, permission to file dues under SVLDRS and issuance of discharge certificate.
4. The Hon'ble HC rejected the appeal on two grounds that HC cannot go beyond the scheme and the designated committee under SVLDRS no longer exists.
5. The Hon'ble SC quashed and set aside the order of HC and held that CD cannot be punished for not doing something which was impossible for it to do because of legal impediment of moratorium under the Code. Accordingly, appeal was allowed, and CD was permitted to deposit dues under SVLDRS. It was observed by the SC that there was a legal impediment in the way of the CD to make any payment during the moratorium.
6. The SC quashed the order of HC and observed that CD was not in the position to deposit the settlement amount at the relevant time because of bar under the IBC, during the moratorium, no payment could have been made. In that view of the matter, the CD cannot be rendered remediless and should not be made to suffer due to a legal impediment which was the reason for it and/or not doing the act within the prescribed time.

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