

LEGAL UPDATES

BOMBAY HC (NAGPUR BENCH): HC QUASHES REASSESSMENT NOTICE RAISED BY IT DEPARTMENT AFTER RESOLUTION APPROVAL

A writ petition was filed with the issue questioning whether the Income Tax Department's officials have the authority to notify a corporate debtor under Sec. 148 of the ITA of 1961 that they must submit a return in the required format for the assessment year that ended before the date the resolution plan under the IBC of 2016 was approved on the grounds that Respondent No. 1 - the Assessing Officer - had cause to think that the corporate debtor's income was subject to taxation but had escaped assessment under Sec. 147 of the same Act. The bench comprised Justice Anil L. Pansare and Justice Sunil B. Shukre. The petitioner argued that because the Adjudicating Authority, had approved the Resolution Plan and given notice of the effective date for the Resolution Plan's implementation, the Income Tax Department was not authorised to issue the impugned notice after the Resolution Plan's approval. The arguments were based on the idea that assertions that were left out in the Resolution Plan could not be maintained against the Corporate Debtor and could not be brought later, and as a result, the Respondents were not authorised to bring any legal action to recover any unpaid debts from the Petitioner (Corporate Debtor). Respondent argued that because the claim had not yet crystallised when the impugned notice was sent, it could not be included in the Resolution Plan. The notification was sent out in conformity with Sec. 148 of the Act because the Petitioner needed to file its return according to the provisions of the ITA of 1961 because the income subject to tax for the assessment year 2014–15 had eluded assessment. By relying on the Apex Court decision with respect to the issuing of succeeding claims in the Ghanashyam Mishra case, it was observed by HC that after the resolution is submitted by the successful Resolution Applicant, he cannot be abruptly confronted with the unresolved claims, as it can create ambiguity in the matter of charge payable by the expected Resolution Applicant who would strongly succeed the business of the corporate Debtor. Pertinently, insisting upon the observation of the Apex Court that all such claims which are

not inherent to the Resolution Plan approval, shall be eradicated and no person be permitted to start off any proceedings, HC stressed that the mentioned observation would include the proceedings in the form of notice issued u/s 148 of the ITA. The Court concluded by advising the Income Tax Authority or the Legislature, to prevail over such circumstances by imparting circulars under Rules or through an Amendment in the ITA, 1961, in accordance with Sec. 44(6) of the Maharashtra Value Added Tax, Act, 2002. HC was unable to find any reason for not raising the claim prior to the Resolution Professional or the Adjudicating Authority. Therefore, the notice issued by the Income Tax Department u/s 148 of the ITA was quashed.