

**Assessee cannot be denied relief under SVLDR Scheme for non-payment due to the legal impediment**

The Hon'ble Supreme Court in *M/s Shekhar Resorts Limited v. Union of India [Civil Appeal No. 8957 of 2022 dated January 5, 2023]* has held that the assessee cannot be denied relief under Sabka Vishwas (Legal Dispute Resolution) Scheme, 2019 ("**SVLDR Scheme**") for not making payment of the dues in the prescribed time limit due to inability of making payment in the moratorium period.

**Facts:**

M/s Shekhar Resorts Limited ("**the Appellant**") is engaged in the business of hospitality services. The Revenue Department ("**the Respondent**") conducted investigations for alleged evasion of Service Tax by the Appellant and issued a Show Cause Notice ("**SCN**") demanding payment of Service Tax. Further, the proceedings under Insolvency and Bankruptcy Code, 2016 ("**IBC**") were also initiated against the Appellant. The corporate resolution process was initiated and the Appellant was subjected to moratorium under Section 14 of the IBC on and from September 11, 2018.

Subsequently, the Appellant submitted an application for availing the benefit of SVLDR Scheme, wherein, the Designated Committee directed the Appellant to pay the amount of INR 1,24,28,500/- under the SVLDR Scheme, within 30 days, which was further extended till June 30, 2020 by the government due to COVID pandemic. Further, the Resolution plan was approved by the National Company Law Tribunal ("**NCLT**") due to which the moratorium period came to an end with the closure of the insolvency proceedings on July 27, 2020.

The Appellant therefore, on October 9, 2020 wrote to the successful resolution applicant and the Commissioner, CGST and Central Excise, Agra intimating them that the resolution process under the IBC had come to an end and that the Appellant is ready and willing to make full

amount of INR 1,24,28,500/- as ascertained by the Designated Committee which could not be made earlier due to the legal moratorium imposed upon the Appellant.

However, the Joint Commissioner refused the Appellant to make the payment on the grounds that the last date for the same was June 30, 2020.

This appeal has been filed against the order dated June 24, 2021 (“**the Impugned Order**”) passed by the Hon’ble Allahabad High Court, wherein the petition of the Appellant was dismissed, on the grounds that the High Court shall not issue a direction contrary to the SVLDR Scheme and the relief sought cannot be granted as the Designated Committee under the SVLDR Scheme is not existing.

**Issue:**

Whether the Appellant is entitled to make payment of the dues under the SVLDR Scheme post moratorium?

**Held:**

The Hon’ble Supreme Court in ***Civil Appeal No. 8957 of 2022*** held as under:

- Noted that, it was impossible for the Appellant to make any payment during the period of moratorium as per the provisions of IBC.
- Further noted that, there was a legal impediment in the way of the Appellant to make any payment during the moratorium. Even if the appellant wanted to deposit settlement amount within the stipulated period, it could not do so in view of the bar under the IBC. Thus, the Appellant 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.

- Observed that, the Appellant cannot be punished for not doing something which was impossible for it to do.
- Noted that, in case where the High Court/courts have passed an order setting aside the rejection of the claim under the SVLDR Scheme after June 30, 2020, the applications can be processed manually.
- Stated that, as the Appellant was not in a position to deposit the settlement amount at the relevant time, due to legal impediment and the bar to make the payment of settlement amount in view of the moratorium under the IBC, whereas, the Appellant was otherwise entitled to the benefit under the SVLDR Scheme.
- Held that, the High Court has erred in refusing to grant any relief to the Appellant.
- Quashed and set aside the Impugned Order.
- Directed that, the payment of INR 1,24,28,500/- already deposited by the Appellant be appropriated towards settlement dues under SVLDR Scheme and the Appellant be issued discharge certificate.

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