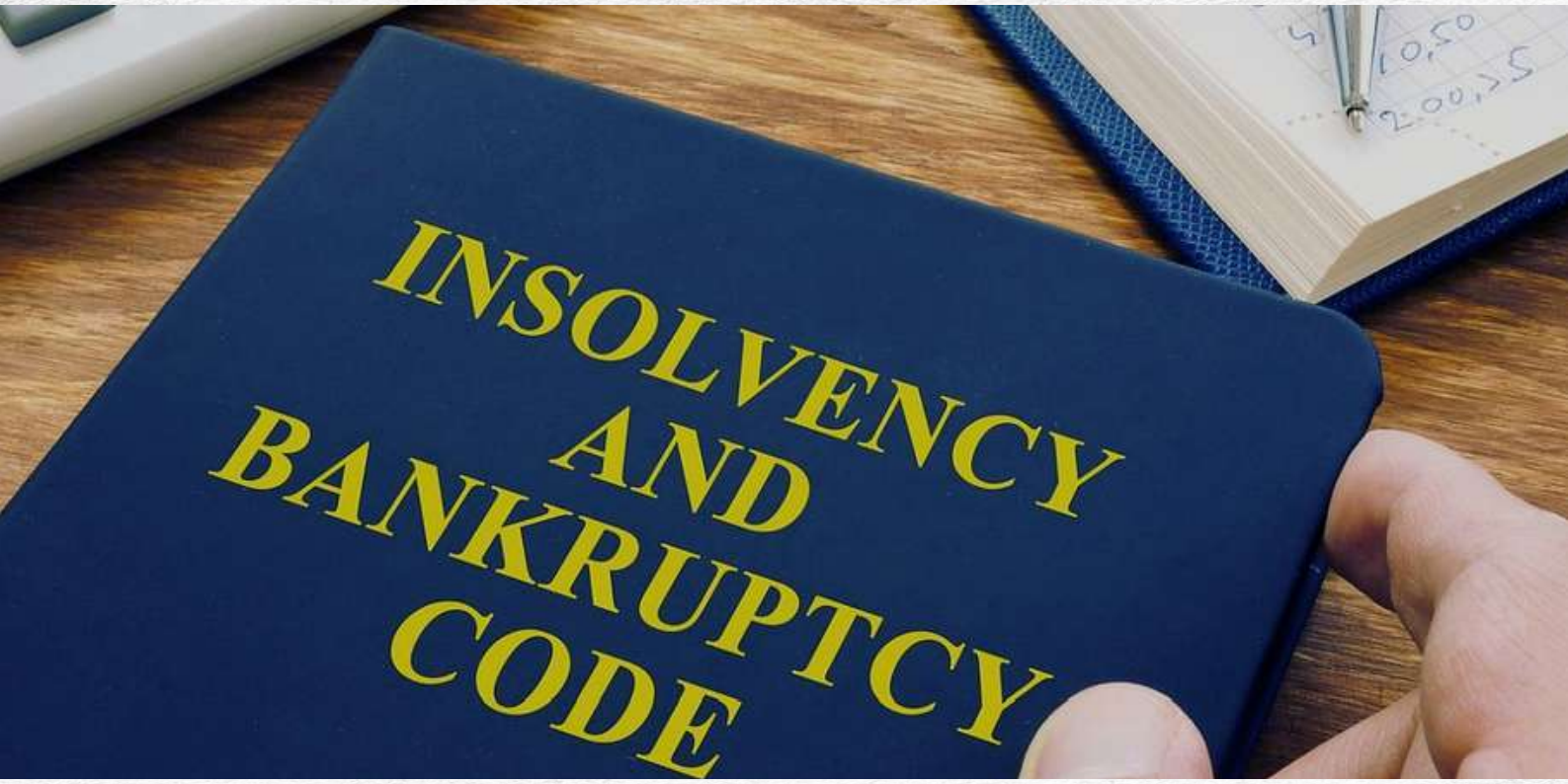
AVM RESOLUTION PROFESSIONALS

RESOLUTION TIMES

Newsletter of a Premier Insolvency Professional Entity

01 March 2023, ISSUE 37



LATEST JUDGEMENTS AND UPDATES

NCLAT JUDGEMENT

1. Shri Guru Containers Vs. Jitendra Palande

In case of Shri Guru Containers Vs. Jitendra Palande, the appeal has been filed at NCLAT New Delhi where the Adjudicating Authority directed Shri Guru Containers, the present Appellant to reimburse the Interim Resolution Professional (IRP) the total costs of Rs.5,62,000/- which was incurred by the IRP in the discharge of his duties.

The appellant contended that, IRP has not pursue the Section 19 application seriously and hence the application still remains pending. Moreover, application filed under Section 60 of IBC was heard by Adjudicating Authority on 07.12.2022 and reserved for orders. However, the impugned order was issued carrying the date of 07.12.2022 though uploaded on 10.01.2023. It was added that this impugned order suffered

WHAT'S ~~INSIDE THIS~~ ISSUE:

from three irregularities. Firstly, it was passed without considering the submissions of the Appellant. Secondly, it was passed in violation of Rule 150 of NCLT Rules as it was not pronounced in the open court.

Thirdly, the impugned order does not contain reasons for allowing the fees and expenses claimed by the IRP. The Learned Counsel for the Appellant strenuously contended about dereliction of duty on the part of IRP and stated that the Appellant was, therefore, not obligated to reimburse the IRP for his fees/expenses. Further, RP had failed to disclose the detailed item wise break-up of the fees and expenses claimed by him which is required in terms of the Code of Conduct in terms of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 34-A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

The respondents in response, that there has been an apathy and non-cooperation by the Appellant and their disinterest in the revival of the Corporate Debtor. Further, CIRP could not progress and the IRP cannot thus function due to reasons beyond his control, IRP was therefore, constrained to file an application under Section 19 seeking directions from the Adjudicating Authority to the suspended management to extend assistance and cooperation besides reimbursement of expenditure incurred on CIRP.

Further, CIRP Regulation 33(3), the person filing the application under Section 7, 9 or 10, as the case may be, is required to bear the expenses incurred by the IRP which shall then be reimbursed by the CoC to the extent such expenses are ratified, and since the CoC is not formed the expenses has to be borne by the Operational Creditor/Appellant who moved the Section 9 application, which has been admitted by the Operational creditor to be paid.

On the basis of the contentions it has been held that Section 217 of the IBC empowers any person aggrieved by the functioning of a Resolution Professional to file a complaint before the IBBI. The Operational Creditor was at liberty to report any dereliction of duty on the part of the IRP but that not having been done, the denial to pay fees and expenses is not acceptable. Hence, IRP is entitled in this case to claim his fees/expenses incurred on CIRP and needs to be compensated for his professional services.

2. Baroda Freight Carrier Vs. Ketulbhai Ramubhai Patel RP of M/s Sintex BAPL Ltd

INSOLVENCY TRIVIA

1. The declaration given under voluntary liquidation shall not be accompanied with:

(a) Audited financial statements
(b) Records of business operations
(c) Report of valuation of assets
(d) Records of invoices

2. After the completion of voluntary liquidation the company needs file an application for dissolution to:

(a) ROC
(b) NCLT
(c) IBBI
(d) all of the above

3) By what percentage of votes a repayment plan is approved in the meetings of the creditor?:

(a) More than 33%
(b) More than 75%
(c) More than 50%
(d) More than 66%

4) The application for a Fresh Start Order may be made by the

(a) Creditor
(b) Resolution Professional
(c) Debtor
(d) Person themselves or By a Resolution professional

In the case of Baroda Freight Carrier Vs. Ketulbhai Ramubhai Patel RP of M/s Sintex BAPL Ltd.,the Appellant is claiming the amount with regard to transportation services provided to the Corporate Debtor for the period January, 2021 to 28.06.2021. The CIRP against the Corporate Debtor commenced on 18.12.2020. The Adjudicating Authority has rejected the application were noticing the submission of the Respondent that amount of the operational debt and cannot be treated as CIRP cost.

Hence, aggrieved by the said order the appeal has been filed. The appellant contended that in the aggrieved order transportation services provided to the Corporate Debtor from the period January, 2021 to 28.06.2021, is a CIRP cost, and thus has been which has been specifically pleaded. The respondent responded that the amount as claimed appeared to be the operational debt and hence cannot be treated as CIRP at this stage, which was considered by the Adjudicating Authority wherein since CIRP is continuing therefore, the treatment of the unpaid amount cannot be CIRP cost.

The NCLAT held that Appellant in its application has clearly mentioned that the amount is being claimed for service provided from January, 2021 to June, 2021, there could not be any question of it being operational debt and Adjudicating Authority ought to have been considered the application on merit and the reasons given by Adjudicating Authority for rejecting the application are unsustainable.

3. Shapporji Pallonji and Co. Pvt. Ltd. v. Kobra West Power Company Ltd.

NCLAT in the case of Shapporji Pallonji and Co. Pvt. Ltd. v. Kobra West Power Company Ltd. has held that the arbitration proceedings initiated prior to the initiation of the CIRP shall be continued to after the approval of the resolution plan.

In the present case, the Appellant, one of the Operation Creditors (OC) had filed an appeal against the plan approval order of the Adjudicating Authority stating that the plan doesn't provides for the claims of the Appellant for which there is an ongoing arbitration proceeding. It was further contended that there was no written communication by the Resolution Professional (RP) regarding the rejection of the claim. Reliance was made to the judgement of Hon'ble Supreme Court in the case of Fourth Dimension Solutions v. Ricoh India Limited & Ors. wherein the court observed that the OC will have the liberty to continue the arbitration proceedings post the approval of the plan.

ANSWER KEY FOR THE PREVIOUS QUIZ

1.(c) Bankruptcy Trustee

2. (d) IBBI

3.(d) Bankruptcy Trustee

4. (d) From All debts except debts incurred by means of fraud or breach of trust to which he was a party

Thus, after coming to know about the financial offer in a Plan, which has been approved by the CoC, any subsequent offer by any entity, who did not participate in the process earlier, cannot be accepted, as it is bound by its own decision taken in approving the Resolution Plan.

The Respondent, on the contrary, submitted that the appeal does not make out any grounds as specified under Section 61(3) of the Code and should be filed as an application under Section 60(5). Further, it was stated that the Appellant never challenged the rejection of the claim by the RP prior to approval of the plan of which it was aware through the continuous upload of information on the website of the CD. Also, Regulation 13(2) of the CIRP Regulations doesn't cast a duty on the RP to provide individual notice to be served on the creditors regarding admission or non-admission of their claims. Lastly, it was contended that filing of appeal after a period of more than 5 months from the date of approval of the resolution plan is not tenable.

The NCLAT after hearing the parties observed that the order for approval of the resolution plan is tenable in law. However, it noted that the RP ought to have made a contingent provision w.r.t. the claim of the Appellant. Lastly, it was held that the Appellant to pursue all contentions available to them in the pending arbitration proceedings which is to be decided as per its own merits in accordance with law.

4. Rourkela Steel Syndicate v. Metistech Fabricators Pvt. Ltd.

NCLAT in the case of Rourkela Steel Syndicate v. Metistech Fabricators Pvt. Ltd. has held that the application for initiation of insolvency filed by the unregistered partnership firm does not attracts limitation as under Section 69(2) of the Partnership Act and thus liable to be admitted.

The appeal has been filed under Section 61 of the IBC against the impugned order of the Adjudicating Authority ("AA") whereby the AA rejected the application filed by the Operational Creditor ("OC") on the ground that the same is barred by Section 69(2) of the Partnership Act which bars the suit filed by the unregistered partnership firm against a third party.

The NCLAT referred to the case of Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Limited and Anr. Wherein the Supreme Court observed that Article 62 of the Limitation Act shall be made applicable only in the case wherein the suit has been filed which means the same is not applicable in case of applications being filed.

Appellate Tribunal observed that an application filed under the IBC cannot be said to be a suit and thus, the bar under Section 69(2) does not gets attracted here. Hence, the application filed was held liable to be admitted.

5. Kanti Mohan Rustogi v Redbrick Consulting Pvt. Ltd. & Ors.

NCLAT in the case of Kanti Mohan Rustogi v Redbrick Consulting Pvt. Ltd. & Ors. has held that Section 29A of the Code should be given a purposive interpretation and the person ineligible under this section should not be allowed to come in new avatar to acquire the company.

The Appellant (Liquidator) has filed the present appeal against the impugned order of the AA. The Appellant submitted that the CD is an MSME, thus, the SRA (having common director as that of the CD) is eligible to submit the resolution plan.

The Appellant has challenged the order passed by the AA holding that since the SRA is ineligible under Section 29A(g) on the basis of application filed against the suspended director of the CD for recovery of an amount which has not been adjudicated.

He further contended that the applicability of the Section comes into picture when there has been an order passed by the AA in this regard which is not present in the case in hand.

The Respondent, on the contrary, argued that the notification issued by the Ministry of MSME dated 26.06.2020 is fully applicable in the present case and the same was required to be complied by the SRA which the SRA has not done by not registering itself. Thus, the benefit under Section 240A shall not be made available to the SRA.

NCLAT enquired regarding the question of whether the SRA is eligible under Section 29A in being a Resolution Applicant or not. It referred to catena of judgements and held that the SRA ought to have obtained Udyam Registration Certificate to get the benefit under Section 240A.

It further enquired whether the SRA was eligible to bid for the CD during the e-auction of the CD as a going concern. The Appellate Tribunal observed that the suspended director is the director in the SRA which cannot be ignored while lifting the corporate veil.

It also held that the objective of Section 29A is to restrict the old management to come in new avatar which is equally applicable in liquidation scenario also.

Hence, the SRA was held to be ineligible to receive benefit under Section 240A of the Code.

6. Noble Marine Metals Co. WLL v. Kotak Mahindra Bank Limited

NCLAT in the case of Noble Marine Metals Co. WLL v. Kotak Mahindra Bank Limited has held that the plan can be send to the CoC back for reconsideration if it does not matches the parameters of Section 30(2)(e) of the Code.

The appeal has been filed by the SRA against the impugned order of the AA wherein the AA had remitted the resolution plan back to the CoC for reconsideration in accordance with law. The Appellant contended that since the plan has been approved by the AA, the same cannot be sent back to the CoC for its reconsideration. It referred to the case of Ebix Singapore by the Hon'ble Supreme Court which has held that once the resolution plan is approved by the CoC, the same becomes binding on the SRA and the CoC and will not be modified.

The Respondent, on the other hand, argued that the entire plan has not been sent for reconsideration rather a clause which provides for mandatory release of personal guarantees given by the promoters as the said provision is not in consonance with Section 128 of the Contract Act and hence, deserves to be deleted from the plan to be in compliance with Section 30(2) of the Code. It was further argued that the decision to remit the plan back was also consented by the SRA.

NCLAT referred to the case of CoC of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. and observed that in case the plan is not in consonance with Section 30(2)e, the same is liable to be intervened by the AA by way of judicial review. Thus, it held that if a plan which is not complying with Section 30(2)(e) can be sent back to the CoC to review.

Further, it was observed that reconsideration was only sought w.r.t. the clause relating to the release of personal guarantee and not review or withdrawal of the plan. Hence, the NCLAT upheld the order of the AA and directed the RP to submit the modified plan if any received to the AA.

7. Vijay Kumar Gupta v. Canara Bank

NCLAT in the case of Vijay Kumar Gupta v. Canara Bank has held that the provision as provided under Regulation 31(3) of the Liquidation Regulations allows the Liquidator to modify the amount of claim if any if he becomes aware of any substantial fact.

The Appellant/Liquidator has filed the present appeal against the order of the Adjudicating Authority (AA) for rejecting the reliefs sought for reducing the claim of the Respondent and accordingly modify to the same effect in the list of stakeholders in accordance with Regulation 31(3) of the Liquidation Process Regulations, 2016. He contended that on receiving the additional information, he in terms of Regulation 31(3) had reduced the claim amount which allows the Liquidator to modify the claims only on the direction of the AA. The Respondent contended that the Liquidator has to abide by Regulation 38 to 42 while verifying or dealing with the claims.

The NCLAT after hearing the parties observed that once the claim has been dealt by the Liquidator in accordance with Regulations 38 to 42 and post that any information is received by him, he shall have no jurisdiction to reject or make any modification in the claims which has already been admitted as per Section 40 of the Code and shall have to approach the AA for the purpose of modification which has been done in the present case by the Liquidator.

Hence, the impugned order of the AA was set aside and the matter was sent back to the AA for fresh consideration in light of Regulation 31(3).

8. Principal Commissioner of Income Tax v. M/s Assam Company India Ltd.

NCLAT in the case of Principal Commissioner of Income Tax v. M/s Assam Company India Ltd. has held that the dues of the income tax department are government dues and are liable to the treated as secured creditors under the Code.

Brief facts of the case are such that the Appellant had placed demand before the RP for INR 16 crores approx. for which the claim was also filed in Form B. Responding to this, RP filed a reply mentioning that the claim of the IT dept would not be admitted as the Respondent (CD) has filed an appeal with the CIT.

He further intimated the Appellant that post receipt of final order of the CIT(A), the SRA would pay the demand which will become a statutory liability and stated that the CD has considered their claim as contingent in its books. The Respondent thereafter intimated that he may consider payment of an amount equivalent to 15% of the dues as the Respondent had filed an appeal for the stay of demand before the AO. T

he Respondent failed to deposit the required amount thereby making the stay demand as “null” and “void” and entire amount as outstanding as on the date of CIRP.

To this, the NCLT observed that the written intimation by the IRP was to be duly considered by the new resolution plan by the SRA and the Appellant has the right to claim the same from the SRA.

The Appellant has challenged the impugned order wherein the reliefs sought by the Respondent related to extinguishment of demand raised by the IT department (IT dept) was granted. The Appellant has contended that it had relied on the intimation received from the IRP and further submitted that the stay granted by the Appellate Authority has already been expired, the dues were liable to be paid by the Respondent within 7 days.

The Respondent, on the other hand, argued that once the plan is approved the same shall become binding on all the stakeholders including the statutory authorities and the government and thus, the SRA cannot be burdened with unprecedented liability post the approval.

It was further argued that the claim filed by the Appellant was admitted to some extent and became part of the information memorandum also. Therefore, the claim raised by Appellant for the same amount would lead to modification of the resolution plan.

NCLAT after hearing the parties observed that the ratio of State Tax Officer v. Rainbow Papers Limited shall be made applicable to the present case in hand and hence concluded that the dues of the Appellant are Government Dues and thus, Secured Creditors under the Code.

NCLT JUDGEMENT

1.Torrent Investments Pvt. Ltd. v/s. Y. Nageswara Rao, Administration

Torrent Investments Pvt. Ltd. v/s. Y. Nageswara Rao, Administration wherein the Applicant – PRA apprehends that a non-compliant plan, submitted by Hinduja Group may be presented by the Administrator before the CoC in its meeting.

The applicant contended that the the Challenge Mechanism must be read in a manner that complies with the Code and the CIRP Regulations, and only the complaint resolution plans can be considered for the same. Therefore, The CoC cannot rely on general provisions, flexibility, ‘commercial wisdom’ and value maximization to render the concluded challenge mechanism and Regulation 39(1-A).

The tribunal is of the view that the CoC decided on the modalities of a challenge mechanism and the administrator having concluded the challenge mechanism in terms of the modalities of the challenge mechanism so decided by the CoC, the process under Regulation 39(1A) got concluded.

It is important to note that the Administrator, either on its own or on the instructions of the CoC, never changed the modalities of the challenge mechanism or revised the challenge mechanism despite reserving the power to do so under clause 11 of the challenge mechanism and instead concluded the challenge mechanism and declared so.

Thereafter, the Administrator was required to undertake the steps for ensuring the compliance of the plans with the provisions of the challenge mechanism and also other compliances under the Code and the CIRP Regulations under Regulation 39(2) of the

CIRP Regulations and thereafter, CoC is mandated to take voting on the compliant plans under Regulation 39(3) of the CIRP Regulations. At the stage of voting of the Resolution Plan, the CoC has the commercial wisdom to approve any plan and such commercial wisdom exercised in terms of Regulation 39(3) cannot be called in question by any Resolution Applicant.

Further, Hon'ble NCLAT in the matter of Jindal Stainless Limited vs Shailendra Ajmera, where the challenge mechanism specifically reserved the right of the CoC to cancel or abandon the process at any stage including during the challenge process, however, the CoC in the present case did not prescribe such wide powers to the CoC, and in fact the challenge process was successfully concluded and as per their own process note approved by the CoC. However, untrammeled powers of the CoC to negotiate under the provisions of the RFRP in exercise of its commercial wisdom is circumscribed by the framework for value maximization provided under the Insolvency and Bankruptcy Code, 2016 ("Code") read with the CIRP Regulations. The RFRP, being a creature of CIRP Regulations, its provisions cannot be used to defeat the scheme laid down by the IBBI under the very same CIRP Regulations.

2. B4U Broadband (India) Pvt. Ltd. Vs. Kyta Productions Pvt. Ltd.

Background

The Corporate Debtor was in contract with the VBLLP with regard to the production and release of the film called ''Pataakha''. The Corporate Debtor with the consent of VBLLP further entered into an agreement with the Operational Creditor to perform its part of the contract with VBLLP, as can be made out from above referred terms and conditions of the contract between the Operational Creditor and the Corporate Debtor. The former was to make certain investments in the promotion and release of the film along with the Corporate Debtor and after the film was released, the revenue generated from the release of film were to be shared as defined in Revenue Share Clause.

Analysis and Decision

After perusal of the said matter, NCLT held that the Operational Creditor /Petitioner did not provide any services to the Corporate Debtor. Rather the Petitioner made an investment in the movie and profits were to be shared between the parties after the release of the film. It is settled that as per section 5(21) of the Insolvency Bankruptcy Code, 2016, '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.

Further, a plain reading of the aforesaid section 5(21) clearly reveals that the Operational Debt comes into being only when some service is provided or some goods were sold whereas in the instant case, none of the two requirements are being met. The Petitioner has not provided any services nor sold any goods to the Corporate Debtor.

Therefore, the claim referred in the Petition cannot be equated with an Operational Debt on the basis of which the provision of Section 9 of the Code could be invoked. Rather it is evident from the terms and conditions of the Agreement that Petitioner made investment by the way of j

Joint venture in the production and release of the movie titled ‘‘Pataakha’’ and the revenue generated from the release of thefilm was to be shared by all the stakeholders including the Petitioner.

Accordingly, NCLT pronounced that the Petition under Section 9, which can be filed only in case of default of payment of the Operational Debt, is not maintainable. As a result of the above discussion, the petition was dismissed being not maintainable under section 9 of the Code.

3. Sneha Techno Equipments Pvt. Ltd. Vs. Vinod Kumar Kothari, Liquidator

Background & Issue

Present IA was filed under section 60(5) of IBC Code 2016 read with Rule 11 of the NCLT Rules, 2016 by the applicant who was declared as the highest bidder in the e-auction held by the Respondent. In the present case, EOI was issued by the liquidator on 08.07.2020, i.e. after the date of amendment of period for payment of balance sale consideration to 90 days in Liquidation Regulations (amended on 25.07.2019).

In the EOI issued on 08.07.2020, the period was mentioned to be 15 days by the liquidator, whereas applicant sought extension up to 90 days from the date of demand in terms of the amendment dated 25.07.2019.

Issue

Whether forfeiture of EMD by liquidator is bad in law?

Observation and Decision

a. Period of 90 days to make balance payment in Auction Sale is mandatory

While examining the plea regarding period of 90 days for deposit of balance amount of consideration and effect of circular dated 26-08-2019, in the first instance NCLT placed reliance on an order passed by Hon’ble NCLAT New Delhi, in Potens Transmissions & Power Pvt. Ltd Versus Gian Chand Narang. Therefore, there was no doubt period of 90 days to make balance payment is mandatory and not left to the discretion of liquidator while laying down terms and conditions of auction notice.

b. IBBI Circular date 26.08.2019

With a view to analyse argument of validity of circular dated 26.08.2019, NCLT observed that there is no power to issue such circular under Section 196 of IBC 2016. NCLT held that the circular dated 26.08.2019 as non-est in law.

c. Conclusion

NCLT held that the liquidator, after the amendment was required to grant 90 days for making payment of balance sale consideration in the EOI issued by him on 08.07.2020 and by not doing so in accordance 2nd proviso to Clause 1(12) under Schedule I of the Liquidation Process Regulations, 2016 after amendment on 25th July, 2019 and subsequently forfeiting the EMD, has acted contrary to law.

In view of the above position, it was held that forfeiture of EMD by liquidator is contrary to law and the same is, therefore, liable to be set aside. NCLT accordingly allowed the present application by setting aside forfeiture of EMD and direct the liquidator: – a. to refund the

amount of EMD forfeited by him within 30 days the date of this order with an interest @ 4% from forfeiture date, failing which, liquidator will be liable to pay the forfeiture amount of EMD along with an interest of 7% till the actual payment is made to the applicant. With these observations, the application was disposed of accordingly.

4. Zee Entertainment Enterprises Ltd. Vs. Indusind Bank Ltd

In the case of Zee Entertainment Enterprises Ltd. Vs. Indusind Bank Ltd, being heard by the NCLAT Mumbai Bench, followed the DSRA Guarantee Agreement dated 29th August, 2018 was executed between the Applicant and the Financial Creditor whereby the Applicant agreed to maintain the DSRA Amount. whereby the Applicant agreed to maintain the DSRA Amount.

The company petition in the present application purportedly on the basis of the alleged defaults of the Corporate Debtor to make payment under the DSRA Guarantee Agreement as it took place during a period which bars/precludes the filing of petitions inter alia under Section 7 of the Code.

Statutorily, such defaults cannot be entertained by this Hon'ble Tribunal due to the express bar under Section 10A of the Code.

The issues deduced thereafter in the application is whether the liability of Zee Entertainment Enterprises Limited is limited only to the extent of DSRA amount defined in the DSRA Agreement dated 24.08.2018 executed by the principal borrower M/s Siti Networks Limited in favour of Indusind Bank Ltd. or for the entire liability of the principal borrower under Term Loan II?

Answering the issues, the tribunal inferred that the Courts and Tribunals while deciding the rights of the parties under any contract or agreement shall decide the same by reading the entire terms and conditions of contract or agreement as a whole and not by reading one or two Clauses in isolation.

Thus, considering the clauses of the said agreement ZEEL is virtually and legally treated as principal debtor to the lender in so far as recovery of Term Loan-II is concerned since ZEEL and M/s Siti Networks Ltd. are two different companies of the same group and management it is the responsibility of ZEEL to see that the principal borrower shall maintain the balance in DSRA Account at all times.

5. Phoenix ARC Pvt. Ltd. Vs. M/s. Cherupushpam Films Pvt. Ltd.

Background

Present Application has been filed by Phoenix ARC Private Limited (Trustee of Phoenix Trust FY 17-8)(Financial Creditor), an assignee of loan of corporate debtor, on 10.10.2022 by invoking the provisions of Section 7 of the IBC against M/s. Cherupushpam Films Private Limited Corporate Debtor) in order to initiate CIRP against the Corporate Debtor for the default amount of Rs 14,50,78,158/- as on 05.10.2022 together with interest and additional interest at the applicable rate from 05.10.2022 till the date of realization of dues.

The deed of assignment dated 17.03.2017 was executed by the South India Bank Limited, original lender infavour of the petitioner at Ernakulam assigning INR 79,25,00,000/- value of loans to the petitioner on Rs.500/- value non-judicial stamp paper.

On the respondent side questioned the validity and enforceability of assignment deed because of instrument is engrossed on insufficient Stamp paper.

On the Petitioner side said the question relating to insufficient stamp duty paid on assignment deed is not raised in the reply hence opposed. The question pertaining to payment of stamp duty on assignment deed is concern this is purely question of law, such a plea can be raised even without pleading.

Issues, Analysis and Decision

Issue 1: Whether the deed of assignment dated 17.03.2017 is enforceable instrument?

The assignment deed was executed at Ernakulam, hence the Kerala Stamp Act 1959 alone will applicable to this case. In the Kerala Stamp Act there is no provision available similar to section 8F of Indian Stamp Act 1899. Section 8F Indian Stamp Act 1899 exempt the duty payable under the Indian Stamp Act 1899 and not exempted the payment of stamp duty payable under the Kerala Stamp Act 1959, this is evident from last line of section 8F of Indian Stamp Act 1899.

It is true when the insufficiently or unstamped instrument is produced the same should be impounded and taken further action as per section 33 of Kerala Stamp Act 1959, akin to Section 33 of Indian Stamp Act 1899, but the unstamped or insufficiently stamped original documents alone can be impounded, the photo copies cannot be impounded because section 2(14) defines “Instrument” there photo copy or secondary evidence is not considered as Instrument. In this regard the Apex court held in Hariom Agarwal vs Prakash Chand Malviya 2008(3) CTC 457 that a photo copy of an instrument which is not duly stamped cannot be validated by impounding and cannot be admitted as secondary evidence, instrument under Section 2(14) means only original and does not include a copy thereof.

In this case on the petitioner side only photo copy of the document is presented hence further action could not be taken. In these circumstances it is answered that the assignment deed dated 17.03.2017 is unenforceable, Instrument.

Issue 2: Whether the petitioner has proved its authority to institute this petition?

The petition is filed by an assignee of loan of corporate debtor Phoenix ARC Private Limited. In the cause title the Phoenix ARC Private Limited, company is referred as Trustee of Phoenix Trust FY17-8. It depicts the petition is filed by trustee Phoenix ARC Private Limited company, for the Phoenix Trust FY17-8. The trust is a non-living juristic person, it can function through living person as Trustees or through non-living juristic person company as trustee. In this case the Phoenix ARC Private Ltd a company filed the petition for Phoenix Trust FY 17-18 as it’s Trustee. On the petitioner side Trust deed is not produced, it is vital document to ascertain the existence of Trust and nature of Trust either public or private trust and to ascertain the beneficiaries of Trust etc., In the Trust there must be three elements they are donor or author of trust, Trustees and beneficiaries of trust.

The Trustee is only a custodian or manager of Trust, only on production of Trust deed it can be ascertained whether the Phoenix ARC Private Limited, company is trustee of Phoenix Trust FY17-8 or not. The actual beneficiaries of trust also can be culled out only on production of Trust deed. When the proceeding is filed by the trustee for the Trust, the Trust deed must be filed.

Rule 4(2) of the Adjudicating Authority Rules says in case of assignment of the debt, the assignee shall produce all relevant documents pertaining to the assignment or transfer. Here the particulars of trustee alone are furnished but particulars of Trust is not furnished, the basic document Trust deed also not produced. Even after the plea raised in this regard on the corporate debtor side, the petitioner not inclined to produce the Trust deed, it leads to filing of incomplete petition. In fine it is answered that the petitioner has not proved its authority to institute this petition.
In view of answers arrived to the above points, the petition was accordingly dismissed.

6. Oswal Pumps Ltd. Vs. Bhopal Tractors Pvt. Ltd.

In the instant matter, the question was raised whether the period of limitation be renewed based on emails sent by Corporate Debtor requesting statements to verify the claims.

The Adjudicating Authority observed that the present petition was filed on 13.06.2019, and the default date as per the last issued invoice is 08.02.2015. The operational creditor argued that the corporate debtor had sent several emails requesting statements to verify the claims, but NCLT observed that this does not amount to an admission of the claims, and based on such emails the limitation period cannot be renewed. Based on the above observations,

NCLT was of the view that the mere act of requesting statements from the operational creditor by the corporate debtor does not amount to an admission of claims. Consequently, the limitation period does not get renewed, and the present petition is barred by limitation. Accordingly, the present petition was rejected, and disposed of accordingly.

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