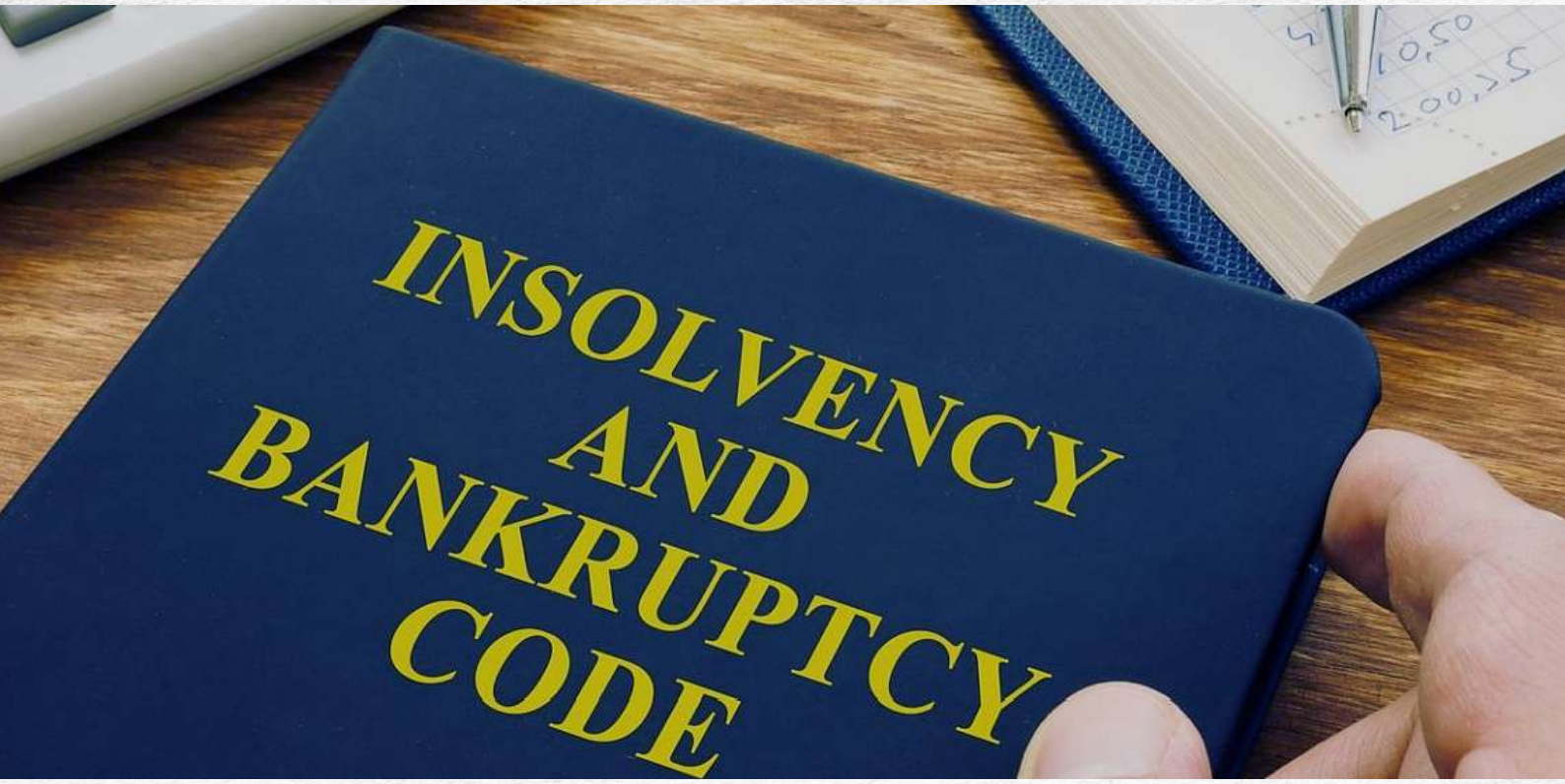
AVM RESOLUTION PROFESSIONALS

RESOLUTION TIMES

Newsletter of a Premier Insolvency Professional Entity

01 MAR 2022, ISSUE 15



EFFECT OF INSUFFICIENTLY STAMPED DOCUMENTS UNDER THE CODE.

It is general principle that if the stamp duty on any document which is to be used as a evidence in a court of law needs to be properly paid. Section 35 of the Indian Stamps Act, 1899 states that Instruments which are not duly stamped are inadmissible as evidence, etc.

Now what will be the situation if any document or agreement is relied by the applicant to file an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the corporate debtor.

This question came up before the two member bench of the NCLT in the case of **Vistra ITCL India Limited vs Satra Properties (India) Limited** .

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WHAT'S INSIDE THIS ISSUE:

In this matter two documents (i) Non-Convertible Debenture Subscription Agreement and (ii) Debenture Trust Deed filed were not sufficiently stamped in accordance with the provisions of the Maharashtra Stamp Act,1958 and therefore are liable to be impounded under Sections 33 and 34 of the said act on the grounds that they were insufficiently stamped. The respondent also took the same plea that these documents cannot be relied upon as evidence of existence of debt and default and therefore liable to be impounded.

NCLT President Opinion:

The NCLT after hearing the arguments in the allowed the Section 7 Application to be admitted however the bench was divided on the issue of impounding and payment of deficit stamp duty.

To resolve the conundrum the bench referred the present application to the President of the NCLT for the third opinion. The NCLT President after the perusal of the application identified two issues that needs to settled:

i. First and the major issue is Whether the pleas of deficit stamp duty can be raised by a Corporate Debtor in a Section 7 application?
ii. Secondly If such plea can be raised then at what stage and before whom?

The NCLT President stated that Section 7 application under the IBC can be filed in a simple form prescribed in the Code and may not even require pleadings as well. The mandatory point of consideration under this application is the proof of existence of debt and default which can also be proved through records maintained by the Information Utility.

Further, the learned Judge stated that the consideration before the Adjudicating Authority is that the said application is filed in accordance with the provisions of the Code and the existence of debt and default is established. In such case the Adjudicating Authority has to admit the application.

To substantiate further, the learned judged gave reference to the NCLAT judgement in **Ashique Ponnamparambath Vs. The Federal Bank Limited [Company Appeal (At)(CH)(Insolvency) No. 22 of 2021]** wherein the NCLAT rejected the appeal with the observations that even if the loan documents are insufficiently stamped and it can't

INSOLVENCY TRIVIA

1 Who shall bear the cost of proving the claims under the liquidation process?

a) Claimant
b) Liquidator
c) Corporate Debtor
d) Creditors

2)What is the available time period with the liquidator for verification of claims?

a) within 7 days from the last date for receipt of claims
b) within 15 days from the last date for receipt of claims
c) within 30 days from the last date for receipt of claims
d)within 60 days from the last date for receipt of claims

3) In which bank shall the liquidator open a bank account of the corporate debtor under the liquidation process?

a) Any Bank
b) Any Commercial Bank
c) Any Scheduled Bank
d) Any Nationalized Bank

4)Disciplinary Committee shall endeavour to dispose of the show-cause notice on an Insolvency Professional within a period of _____ months of the assignments.

a) 3
b) 9
c) 6
d) 12

be accepted in evidence, then also the debt and default can be proved beyond doubt through records and hence, the NCLAT dismissed the appeal. Further, the President referred to several other judgements of coordinate NCLT benches where the similar proposition was held.

Therefore, the defence is not available to the Corporate Debtor in the present case as the debt and default are proved without looking into the above documents.

Whereas, in context of the Second issue i.e when and before whom the above issue of stamp duty has to be raised. The Judge stated it is very clear from the plain reading of the provisions of Maharashtra Stamp Act and Indian Stamp Act, that a duty is cast upon the authority before whom the document is sought to be used as evidence by the party for the purpose of enforcing the contractual rights and obligations. Therefore, the ratio laid down is where the debt and default is established without the perusal of the documents, the argument of insufficient stamp does not stand and the application under Section 7 shall be admitted.

SALE OF THE 'CORPORATE DEBTOR' AS A GOING CONCERN UNDER LIQUIDATION

The sale of a company as a going concern isn't alien under Indian Law. In addition to the provisions for Going Concern Sale (GCS)under the Insolvency and Bankruptcy Code, 2016 (IBC/Code), the concept of GCS is also provided under companies' legislations.The concept of the sale of the company as a going concern was mentioned under the 2000 Report of High-Level Committee on 'Law relating to Insolvency and Winding Up of Companies' headed by Justice Eradi ("Eradi Committee Report"). The committee recommended several amendments under Part VII of the Erstwhile Companies Act, 1956 which included the power of the tribunal to direct the sale of the business of the company as a going concern or at its discretion to sell its assets in a piece-meal manner.The said recommendation paved way for the introduction of Section 457(1) (ca) of the Companies Act, 1956 vide the Companies (Amendment) Act 2002.

Section 457 (1):
ca) to sell the whole of the undertaking of the company as a going concern.
However, such provision could not see the light of the day as the Company Law Amendment Act, 2002 remain suspended throughout.

ANSWER KEY FOR THE PREVIOUS QUIZ

1.(C) **Pari passu with secured creditors and employees**
2.(A) **60**
3.(D) **Seven**

Sale as a going concern under Companies Act, 2013

With the enactment of the Companies Act, 2013 amended provisions of erstwhile company legislation were incorporated in the new law and several powers were granted to the Company liquidator in addition to the tribunal.

Under Chapter XX of the Act, which deals with the winding up of the company certain provisions provide for Going Concern Sale of the company. A glance at certain provisions of the Companies Act, 2013 dealing with GCS.

282. Directions of Tribunal on a report of Company Liquidator

(2) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, order sale of the company as a going concern or its assets or part thereof:

Here, the Tribunal issues directions based on the report submitted by the Company Liquidator under Section 281. Further, Section 281(3) states the company liquidator shall make a report on the viability of the business of the company or the steps necessary to maximize the value of the company.

Further, as per Section 290 (1)(d)[1] the liquidator shall have the power to sell the whole of the undertaking of the company as a going concern.

Sale of the 'Company' itself as a going concern.

It is understood that the company under CIRP is run as a going concern and onus is put upon the Resolution Professional to make every endeavor to run the company as a going concern. Even, under Liquidation the concept of Sale of Company (Corporate Debtor) as a Going Concern (GCS) is provided.

Regulatory Framework under IBC:

Regulation 32 of the IBBI (Liquidation Proceedings) Regulations, 2016 allows for the sale of the company itself as a going concern. Whereas Regulation 32A Liquidation Regulations, 2016 which was inserted vide Notification of 2019 talks about the Sale as a going concern. Even under Regulation 39 C of the CIRP Regulations, 2016 the CoC recommend GCS during CIRP.Further, if the committee recommends GCS, they are required to identify the group of assets and liabilities to be sold under GCS. Unlike CIRP there is no linear process in liquidation.

Regulation 32 of the Liquidation Regulations, 2016 is imperative to be reproduced here:

32. Sale of Assets, etc.

The liquidator may sell-
(a) an asset on a standalone basis;
(b) the assets in a slump sale;
(c) a set of assets collectively;
(d) the assets in parcels;
(e) the corporate debtor as a going concern; or
(f) the business(s) of the corporate debtor as a going concern:

Issues with the existing provisions of GCS under the Code:

The Supreme Court argued in favor of the sale of company under liquidation in a catena of judgments. Subsequently, the amendments were made to give effect to the Apex Court rulings. Regulation 32A and Regulation 45(3) were added under the Liquidation Regulations, 2016.

However, the complexity begins from here. Unlike the concept of Going Concern under Insolvency Resolution Process, where strenuous efforts are made by the concerned stakeholders to keep the company alive and the whole legal and adjudicating ecosystem acts in synchronization to achieve such objective. This is certainly not the case with the GCS under Liquidation proceedings. The regulations drafted for the GCS under liquidation are not watertight and have certain loopholes.

Framework under CIRP to keep the company as a going concern vs GCS in Liquidation.

One of the fundamental objectives behind the Code is to ensure the revival and rescue of the financially distress company.For the rescue of the company under CIRP the Code provided for comprehensive framework where the Role of the resolution professional and the member of the CoC is critical.

Once the CoC is formed by the RP on the basis on the claims received by the Financial Creditors, the whole process is driven under the supervision of the CoC. It is assumed that CoC members who are mostly financial creditors have financial acumen to take decision for the corporate debtor.

- **Liability of the Successful bidder to continue with the company sold as Going Concern.**

For CIRP process, the onus is provided on the Resolution Applicant to implement the resolution plan as envisaged, failing which the appropriate orders can be obtained from the AA. However, there is no provisions provided under GCS as the regulations does not mention about the liability or the duty of the successful bidder to continue the company as going concern.

Further as per the Insolvency and liquidation provisions of the Italy the concept of Sale of Going Concern sale during liquidation is provided and in addition to that the transferee must undertake to continue the business for at least two years.

However, under Liquidation Regulations, such regulations are silent on such liability and thus adds to the existing anomaly. This also creates an opportunity to the prospective to lead the company into the liquidation and buy it under GCS at a discounted rate without any onus of continuing the corporate debtor. This is also against the fundamental objective of the code.

- **Too much responsibility on the Liquidator with less structural clarity**

Under CIRP, the CoC is considered as the best judge of the affairs of the company and their wisdom also called as the commercial wisdom of the CoC is firmly established by the Supreme Court in catena of cases. Also, it is reasonable to understand that most financial creditors

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have financial acumen to understand the commercial decisions and therefore adds to the assistance in the rescue of the Corporate Debtor.

Whereas, under liquidation the complete onus is put upon the Liquidator to complete the process. He is also tasked with running of the business of the company to the extent it is beneficial for the liquidation.

It is understood that if the corporate debtor is required to be sold as GCS, the liquidator is ought to run the business in order to sell it as GCS. This creates lot of burden on the liquidator as liquidator needs to run the business of the company without the assistance of the CoC unlike CIRP as regulations are completely silent on this matter.

- **·Mandatory contents of the Resolution Plan**

One of the major identified issues between CIRP and GCS under liquidation is the provisions under the Code and CIRP Regulations for the mandatory contents and compliances to be complied by the prospective resolution applicant.

These contents or the checklist as we call ensures that the interests of the stakeholders are taken care of, viability and feasibility of the plan implementation, priority of payments etc. Further, the CoC conducts a detailed analysis of these plans and ensures that plan is fit for implementation and approval.

Under the GCS, regulations are completely silent on such and thereby are very less mechanism which provides for checks and balances.

Hence, the framework for the Sale of a Corporate Debtor as a Going Concern requires lot to clarity and linear framework which must align with the objectives of the Code.

The intention of the legislature is to provide another opportunity under the Code to revive the company. However, for such revival several checks and parameters needs to be placed and similar mechanism as provided for CIRP process is need for Sale as a going concern under Liquidation as well.

ANALYSIS OF VARRSANA ISPAT LIMITED: THE CONFLICT BETWEEN IBC AND PMLA

The Insolvency and Bankruptcy Code, 2016 (“IBC/Code”) is a paradigm shift as far as insolvency resolution and bankruptcy process is concerned. The Code subsumes several archaic, fragmented, and flawed laws on insolvency and bankruptcy and has provided a comprehensive framework. Under the Code, the corporate entities are actively taking this route to resolve or revive themselves from financial distress. Since the legislation is still an ongoing process, the jurisprudence for the same is evolving each day.

In furtherance of that, certainty and clarity have been provided by the higher court on interpretations of several provisions and settling the position of law. One of the

significant features of the Code is the provision of "Moratorium". Once the application for insolvency resolution process is admitted by the Adjudicating Authority the moratorium is placed on the Corporate Debtor provides him with the calm period by putting a bar on the continuation or imitation of suits or legal proceedings against the corporate debtor.

With this provision, certain confusion and issues have arisen where the effect of the moratorium hampers the proceedings instituted in a different law. One such issue was faced in the case **Varrsana Ispat Limited vs. Deputy Director, Directorate of Enforcement.**

Brief Facts of the Case:

In the instant case, the Directorate of Enforcement of Central Government attached some of the properties of Varrsana Ispat Limited- (Corporate Debtor). The Resolution Professional filed an application before the Adjudicating Authority for releasing the attachment of certain assets of the Corporate Debtor by the Director of Enforcement (ED).

The Adjudicating Authority in its impugned order[1] stated that the argument of the Resolution Professional does not stand as the order of the attachment by ED was made before the moratorium was placed on the corporate debtor. Therefore, an appeal is preferred before the Hon'ble NCLAT under Section 61[2] of the Code, challenging the impugned order of the AA.

Arguments of the Parties

Before delving into the crux and analysis of this case, let's have a glance at the arguments put forth in this matter.

Appellant's Submissions

- The first argument of the appellant is that moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) has an overriding effect on the ·provisions of the 'Prevention of Money Laundering Act, 2002'. Appellant further stated that during the period of 'Moratorium' the creditors and all authorities causing any disruption in the 'Corporate Insolvency Resolution Process' cannot be allowed to do so.

- Another argument provided by the Appellant is that since the order of attachment by made by the Deputy Directorate of Enforcement and cannot be confirmed by the ED.

Respondent's Submissions

- The Respondent stated that the provisions of 'Prevention of Money Laundering Act, 2002' including Section 2(1)(u) and Sections 3 & 4, the action can be taken under 'Prevention of Money Laundering Act, 2002' even during the period of 'Moratorium'.

- Further, it was contended that Section 14 does not apply to the criminal proceeding or any penal action taken according to the criminal proceeding or any act having the essence of crime or crime proceeds. The object of the 'Prevention of Money Laundering Act, 2002' is to prevent money laundering and to provide confiscation of property

derived from, or involved in, money laundering and for matters connected therewith or incidental thereto.

NCLAT's decision

After the perusal of the argument the NCLAT stated the Provisions under PMLA relate to 'proceeds of crime', and hence Section 14 of the Code does not apply to such proceeding.

As the 'Prevention of Money Laundering Act, 2002' relates to different fields of penal action of 'proceeds of crime', it invokes simultaneously with the Code, having no overriding effect of one Act over the other including the 'I&B Code', hence the appeal was dismissed.

Analysis

The whole issue, in this case, is of the primacy of one law over the other. Both the PMLA and IBC are special provisions designed to provide a framework for different issues. Further, under both the legislation, a non-obstante clause is provided.

In the present case, the NCLAT has upheld the decision of the AA by stating the moratorium will not affect the proceedings under PMLA.

However, this proposition holds certain issues. Firstly, it breaks the establish the established principle of the Supreme Court that in the case of two legislations having non-obstante clauses, the primacy shall be with the law later enacted. In this case, IBC was enacted in 2016 hence, IBC should prevail in this situation.

Further, the intent behind the moratorium is not well appreciated by the court. The moratorium ensures that there are no further proceedings against the corporate debtor. Also, the word used 'continuation of suits or proceedings under Section 14 is not taken into consideration by the NCLAT.

Since the attachment was done before the effect of the moratorium it would come under this provision and hence shall be liable to have the benefit of Moratorium.

Recently, the NCLAT in Directorate of Enforcement v. Manoj Kumar Agarwal took a step forward in construing the overriding nature of the IBC and held that even if there existed an attachment order before the commencement of CIRP, the provisions of IBC would override those of PMLA and a moratorium would be applied to the attachment proceedings. In order to arrive at this finding, the NCLAT referred to the very object and scheme of the IBC which warrants the effective revival of the corporate entity, which would stand frustrated if the resolution professional is not given charge of the properties of the debtor.

Therefore, considering the recent proposition laid down by the NCLAT itself, the judgment of Varrsana Ispat limited the effect of the moratorium which can be detrimental in ensuring the running of the Corporate Debtor as a going concern. Fortunately, with the later judgements, the primacy is given to the IBC in such cases and the position seems settled.

CASE ANALYSIS OF JAYESH N. SANGHRAJKA

NCLAT in the case of Jayesh N. Sanghrajka v. Monitoring Agency nominated by COC of Aristo Developers Pvt. Ltd. has held that the Resolution Professional ("RP") under the Insolvency and Bankruptcy Code, 2016 ("IBC"/"Code") is not entitled to the success fees on the successful resolution of the Corporate Debtor ("CD") and the decision w.r.t. the quantum of the fees paid to the RP does not come within the commercial wisdom of the Committee of Creditors ("COC"). The author shall analyse the above judgement, however before delving into the analysis of the same, it would be imperative to briefly discuss the facts, issues and the decision of the case.

The Appellant, RP of the CD, is aggrieved by the impugned order of the Adjudicating Authority ("AA"/NCLT) by which it has disagreed to approve the 'success fees' to the RP as decided by the COC in the resolution plan. The AA referred to the case of Devarajan Raman v. Bank of India[1] and observed that the fixation of fees does not come under the commercial wisdom of the COC and hence, the decision to disallow the success fees will not intrude on the commercial wisdom of the COC.

Appellant's Arguments:

1. Success fees form part of the commercial decision of the COC and the AA has no right to interfere with the same.
2. Regulation 34 provides for fixing the remuneration of the RP by the COC which becomes part of insolvency resolution process cost and intrusion in the same by the AA is unjustified.

3,The AA has mistakenly referred to Devarajan Raman's case and contended that the facts of both cases are different.

4.IBBI's circular dated June 12, 2018, provides for reasonable compensation to the RP for the work done by him during the CIRP process. The Appellant submitted that the reasonableness should depend upon the decision of the COC whose authority cannot be challenged under the Code.

Respondent's Arguments:

1. IBC does not expressly prescribe or prohibit success fees.
2. The Code has not provided any specific method of quantification of the remuneration payable and the IBBI's circular only provides for remuneration in a transparent manner which should be a reasonable reflection of the work done by the RP.
3. The AA is justified and has the power to check the quantum of fees payable to the RP and also has the authority to oversee the method of payment if the same is inconsistent with the Regulations. Further, the fees can be fixed by the COC which becomes a part of the resolution plan but the same shall always be subjected to scrutiny by the AA which shall not become part of the commercial wisdom of the COC
4. Including success fees and claiming higher amounts in the last meeting of the COC just before the submission of the resolution plan to the AA affects the transparency of the process and had it been the case wherein there is no involvement of the AA in scrutinising

Issues:

1.Whether the IBC allows for giving success fees to the IP?
2.Whether the decision to give success fees comes under the commercial wisdom of the COC?

NCLAT's Decision:

The Appellate Tribunal held that the Code in its provisions or regulations does not provide for fees based on speculations or contingency and hence, charging success fees shall not come under the periphery of the Code. Further, the NCLAT upheld the argument of the Respondent by admitting that the insolvency resolution process cost includes fees payable to the Insolvency Professional ("IP"), however, to check the reasonability in determining the quantum of the fees is the subject matter of the AA. Lastly, it referred to the Supreme Court case of Alok Kaushik v. Bhuvaneshwari Ramanathan & Ors. to conclude that the NCLAT has the power to determine the fees and expenses payable to the professional involved in carrying the process under the IBC.

Author's Analysis:

IBC was enacted to pull out the stressed corporate entity by providing resolution and the role of the IP to bring in resolution plans cannot be accepted as a reason to provide success fees. The role of the IP is to just facilitate the process and it's the COC and the Resolution Applicant who does the negotiations. Thus, in the situation of distress of the CD, giving IP a gift or a reward in form of success fees comes at the cost of interest of the creditors thereby affecting the objective of the Code which is to balance the interest of all the stakeholders of the CD which does not include an IP.

Further, success fees if decided in the initial stage will hamper the independence of the RP and if given after the approval of the resolution plan can take the form of a gift. Also, if the success fees are allowed it will be inconsistent with the circular as mentioned above and with the provisions of the Code which provides for compensation to the IP based on reasonable reflection of work.

Conclusively, the concept of success fees by another name 'contingent fees' is there under the Bar Council of India Rules[1] as per which the advocates are barred from claiming any fees which are subject to any contingency resulting in favourable orders in respect of their clients.

Hence, the author believes that the fees payable to the IP should be at arm's length price, reasonable, and must necessarily be related directly to the CIRP. Further, an IP is expected to perform his duties diligently with integrity which also includes managing expenses incurred on behalf of the CD.

The expenses shall include fees payable to the IP which should be based on the meeting of minds in the initial stage of the CIRP. Thus, claiming success fees in the last COC before approval of the plan takes form of a gift or a reward than an expenditure.

LATEST JUDGEMENTS AND UPDATES

SUPREME COURT JUDGEMENTS

1.Default in Supply from CD will also be an operational debt

Key observations from the latest judgement of Supreme Court in Consolidated Construction Consortium Ltd v. Hitro Energy Solution Pvt. Ltd. :

1.The phrase "in respect to" in the definition of "Operational Debt" under Section 5(21) of the Code is to be interpreted in a broad and purposive manner which will also include the provision of operational services from the Corporate Debtor. The only requirement is that the claim should have a nexus with the provision of goods or services. It nowhere specifies anything about the supplier or the receiver.

2. Observations made by the NCLAT to only include default on those debts wherein goods/services are provided to Corporate Debtor under operational debt is erred in law.

3.Operational debt can be claimed by way of demand notice or an invoice demanding payment.

4.Any advance payment made to a Corporate Debtor for the supply of goods or services would be considered as operational debt.

HIGH COURT JUDGEMENTS

1.NCLT has the jurisdiction to adjudicate matters related to Electricity Act w.r.t. the CD

The Madras High Court in the case of Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) v UOI & Ors. has held that the NCLT has the authority to adjudicate upon any matter raised pertaining to disputes arising under the Electricity Act, 2003.

The principle respondent in the present case has taken the petitioner before the NCLT claiming to be a creditor of the petitioner herein and citing the perceived inability of the petitioner herein to pay its debts.

The petitioner in this case contended that the petitioner company being a substantially owned government company is outside the jurisdiction of the NCLT in insolvency proceedings. It was further contended that the petitioner being the generator and distributor of the electricity under the state government of Tamil Nadu would be governed under Electricity Act as it is a special act and would prevail over Companies Act, 2013 and IBC.

The Respondent on the other hand contended that the there is no exemption of excluding government company either in the Companies Act or IBC. Furthermore, it was contended that the dispute under

under electricity act pertains to dispute between distributors and licensee and the current dispute is pertaining to trade or operational creditor. The Court in this case accepted the contentions of the Respondents and held that the Respondent has the right to approach the NCLT. Furthermore, it was held that an act is considered as special act over others when there is a possibility of conflict. Under Section 86(1)(f) of the Electricity Act, the dispute pertaining to licensee and distributing company is covered whereas, in the present case, petitioner is the distributor but the respondent is not a licensee and thus will be considered as operational creditor. Thus, the court has that NCLT has the authority to deal with the issue.

NCLAT & NCLT JUDGEMENTS

1.Corporate Guarantee shall start from the time when it is invoked within the limitation period.

NCLAT in the case of Intec Capital Ltd. v. Arvind Gaudana (RP) (Company Appeal has held that the liability under the continuous corporate guarantee shall start when it is invoked within the limitation period.

The Appellant has challenged the impugned order of the NCLT wherein its claim in the CIRP of the CD was rejected by the RP stating it to be time-barred and based on an uninvoked corporate guarantee. It was submitted that loan recall cum arbitration notice dated 07.03.2015 was sent to the principal borrower and the CD for the default committed in the repayment of the loan.

Further, it was stated that the termination of the loan and invocation of corporate guarantee notice was sent on 07.03.2016 and the same was within the limitation period qua the loan amount. Also, the Appellant stated that the award from the arbitration was also passed on 21.08.2015 which resulted in favour of the Appellant. The Appellant stated that the above-mentioned shows that the corporate guarantee was invoked against the CD.

On the contrary, the Respondent stated that the Appellant had failed to provide information relating to arbitral award and notices related to invocation of corporate guarantee in Form-C. It was also contended that due to lack of demand notice, the guarantee stands uninvoked and hence, there is no accrued liability. Lastly, it was argued that the claim has become time-barred and thus, cannot be filed.

The NCLAT observed that from the records made available, the guarantee was invoked by the Appellant within the expiry of the loan agreement and the account is an undischarged live account against which the CD must repay in full. It also referred to a case of the Supreme Court wherein it was held that the continuing guarantee shall remain different from the ordinary guarantee and a guarantee wherein the guarantor is liable to pay only on demand different from a guarantee where no such condition is there. The same case also discusses that the claim might be time-barred against the principal debtor but still enforceable against the guarantor and the liability w.r.t.

the guarantor can arise at a later point of time as compared to the principal borrower.
Hence, basing the above mentioned factual scenario, the NCLAT set aside the impugned order of the NCLT and was directed to include the claims of the Appellant which was based on the arbitral award.

2.Mediation order won't extend limitation under the Code.

The NCLAT-Principal Bench, New Delhi, in the case of Ravi Iron Ltd. v Jai Lal Kishore Lal & Ors. held that the Mediation Order would not give an extension of limitation and open a gateway to file an application under Section 9 of IBC beyond prescribed time.

The Appellant filed an application under Section 9 of the IBC whereby he claimed himself to be an Operational Creditor and claimed the principal amount along with interest till 31.12.2019. in the application submitted by him, he himself gave the date of default as 10.01.2008, thus, his application was rejected by the Adjudicating Authority as it was barred by time, and hence the appeal.

The Appellant contended that although, the date of default was mentioned to be 10.01.2008, there was a District Court Mediation on 16.11.2015, where the Respondent accepted his liability and post-dated cheques were issued and dishonored. The last cheque was dishonored on 31.12.2016, thus the application was not barred by time.

The NCLAT held that the Mediation would not give extension of limitation to the Appellant as the purpose of Mediation and post-dated cheques are different.

The Tribunal further added that the Appellant may approach appropriate authority regarding the dishonoring of cheques but it would certainly not give him an extension to file an application under Section 9 as it is barred by time. Thus, the appeal was dismissed.

3.Model Timeline under Regulation 47 of Liquidation Regulations are not mandatory in nature.

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In the matter of Standard Surfa Chem India Pvt. Ltd. Vs. Kishore Gopal Somani The Liquidator of Advanced Surfactants India Ltd., the NCLAT, New Delhi stated that the model timeline provided under Regulation 47 of the IBBI (Liquidation Process) Regulations, 2016 are directory in nature and not mandatory.

Facts of the Case:

In the instant case the appeal is filed by the successful auction purchaser of one of the unit of the property of the Corporate Debtor, i.e. Advanced Surfactants India Ltd. under the liquidation. The appellant emerged as the highest and the successful bidder and therefore the liquidator issued the letter of intent stipulating 90 days' timeline for making the full payment to complete the auction proceeding.The ninety days timeline was to be expired on 03.06.2021. On 25.05.2021 before the appellant filed an interim application before the AA seeking extension in complying with the auction proceeding completion rules. The learned Adjudicating Authority dismissed the IA vide impugned order.

Further, the Liquidator of the Corporate Debtor refused to grant any extension of time for completion of the auction process, despite being empowered to do so in terms of E-Auction Process Information Document governing auction, and also despite him recognising the genuine difficulties faced by the Appellant on account of the 2nd wave of Covid 19 outbreak, in securing the requisite loan from its bankers within the stipulated timelines.

Contentions of the Appellant:

The applicant had sought an extension of 3 months on the ground of the 2nd wave of the Covid 19 outbreak. The applicant stated that Lockdown had been imposed in Tamil Nadu since 10 May 2021 because of the 2nd wave of Covid 19.

Further the appellant stated that the Regulation 47A of Liquidation Regulations, 2016 provided that the period of Lockdown imposed by the central government in the wake of the Covid 19 outbreak shall not be counted for computation of timeline for any task that could not be completed due to Lockdown in relation to any liquidation process.

NCLAT's Observation:

The NCLAT stated that Model Timeline is only a directory in nature. It cannot be considered a deadline. It is provided under Regulation as a guiding factor to complete the liquidation process in a time-bound manner. In exceptional circumstances, such a time limit can be extended. Further, the Tribunal stated that it is necessary to mention that E-Auction Process Information Document also provided discretion to the Liquidator to extend the timeline. The impact of the 2nd wave of Covid 19 was everywhere in India, of which judicial notice can be taken. In the special circumstances, the Liquidator ought to have sought permission of the Adjudicating Authority to extend the timeline. The Adjudication Authority did not consider that satisfaction of creditor claims while ensuring asset maximisation is the underlying principle of the IBC, which cannot be overridden on account of meagre delays induced by a force majeure event.

4.Whether the Resolution Plan is confidential document even after the approval by the Adjudicating Authority.

In the matter of Association of aggrieved workmen of Jet Airways (India) Limited vs Jet Airways India & Anr, the NCLAT, New Delhi decided whether a Resolution Plan (Plan) approved by the Adjudicating Authority (AA) is a public document or not.

In the present matter an appeal is filed by the Applicant who is the association of the workmen of the Jet Airways India Ltd to direct the Respondent No.3 - Resolution Professional to produce records that is Resolution Plan and its annexures with full set of documents relating to Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.

Contentions of the Appellant

The Appellant submits that confidentiality in the CIRP proceeding as mentioned in Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') is very limited and where confidentiality is required to be maintained, the Code and Regulation clearly provides for them. The reasoning behind such confidentiality is to ensure the maximisation of bids and to prevent the undue advantage to competitors from posing as applicants to surreptitiously use information for their own gain.

Further, the appellant stated the Resolution Professional is required to submit the document to the Insolvency and Bankruptcy Board of India for recording keeping purposes. Hence, the information is not meant to be confidential after the CIRP has concluded. It was further submitted that in the impugned order, there is no discussion of compliance of Section 30, sub-section (2) and Regulation 37 and 38 and to effectively support the grounds taken in the Appeal, the Appellant is entitled for copy of Resolution Plan.

Contentions of the Respondent

The Respondent contended that the Resolution Plan is a confidential document and contains confidential information about the Corporate Debtor and the Successful Resolution Applicant, which are not available in the public domain. The Respondent further stated that only members of the Committee of Creditors shall be served with the copy of the plan. Whereas, the Appellant not being the CoC members aren't entitled to receive copy.

Respondent also stated that the submission of all records with IBBI is for record keeping purposes and cannot be construed as publicly available document.

Decision of the Appellate Tribunal

The NCLAT stated that the scheme of the Code indicates that after Resolution Plan is submitted to the Adjudicating Authority and it is approved by the Adjudicating Authority, it no longer remains a confidential document, so as to preclude Regulator and other persons from access the said document.

Further, the tribunal referred to provision under Section 61 of the Code wherein an appeal can be filed to the tribunal for several grounds enumerated hence the contents of the resolution plan needs to be disclosed for such appeal.

NCLAT thus, are of the view that Resolution Plan after its approval by the Adjudicating Authority is no more a confidential document, so as to deny access to even a claimant. It is true that the Resolution Plan even though it is not a confidential document after its approval, cannot be made available to each and to anyone who has no genuine claim or interest in the process.

5.NCLT allowed to sell the non-core assets of the Corporate Debtor.

In the matter of Mr. Ashish Chhawchharia (RP of Jet Airways) Vs. HDFC Limited an application is preferred under Section 60(5)

of the Insolvency and Bankruptcy Code,2016 before the Adjudicating Authority for approval of sale of the non-core assets of the debt-ridden Jet Airways.

In this matter, the RP of the Jet Airways (India) Limited, filed an interim application before the AA to approve the sale of one of the non-core assets of the Corporate Debtor to clear overseas debt of Jet Airways/ Corporate Debtor to ensure six air crafts are freed from encumbrances so that it would hugely maximize the value of the Corporate Debtor during CIRP period.

The said application is filed keeping in mind the Section 25(1) of the Code which talks about the duty of the Resolution Professional to preserve the assets of the corporate debtor. Further, the said proposal of sale was not objected either from any member of the COC or from the charge holder of the premises i.e., HDFC.

Therefore, the NCLT after the perusal of the application y permitted to sell the Premises for utilising the proceeds of the sale of the 3rd and 4th floor to settle the claims of HDFC at INR 360 crores, upon HDFC giving up security interest, charge, or any other rights in respect of the premises and withdrawing the pending Application simultaneously against receipt of the above sum of INR with no further responsibility or liability on HDFC for or towards any further or other costs, charges, claims in connection with the insolvency process or otherwise howsoever, including in the event of any liquidation of the Corporate Debtor, and HDFC charge, security interests, and rights in Debtor, and HDFC charge, security interests, and rights in the Premises shall remain unaffected until receipt Of the full sum of INR and the balance sums remaining from the sale proceeds of the 3rd and 4th floor of the Premises towards settlement with US Exim and CIRP costs.

6. New threshold limit shall be made applicable even for the default prior to 24.03.2020

NCLT Delhi in the case of SS Group Private Limited v. Shiva Asphaltic Products Private Limited (C.P. (IB) 568(ND)/2021) has held that for an application to be admitted under Section 9 for which the date of default is prior to March 24, 2020, the enhance default limit of Rs 1 crore shall be applied.

The Operational Creditor (OC) has filed an application under Section 9 of the Code for default of Rs 88 lakhs along with an interest of Rs 30 lakhs. The Applicant stated that the date of default in the present case is prior to the notification dated 24/03/2020 wherein the minimum threshold limit for invoking provisions of the Code was enhanced. The Adjudicating Authority (AA) referred to the case of Jumbo Paper Products v. Hansraj Agrofresh Pvt. Ltd. wherein the NCLAT made its observations basing Madhusudan Tantia's case and held that since the demand notice and the application under Section 9 were filed before the said notification, the enhance threshold limit shall not be made applicable. Thus, the increased limit shall be made applicable even for the debts on which the default had occurred prior to the notification. Hence, application was rejected.

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