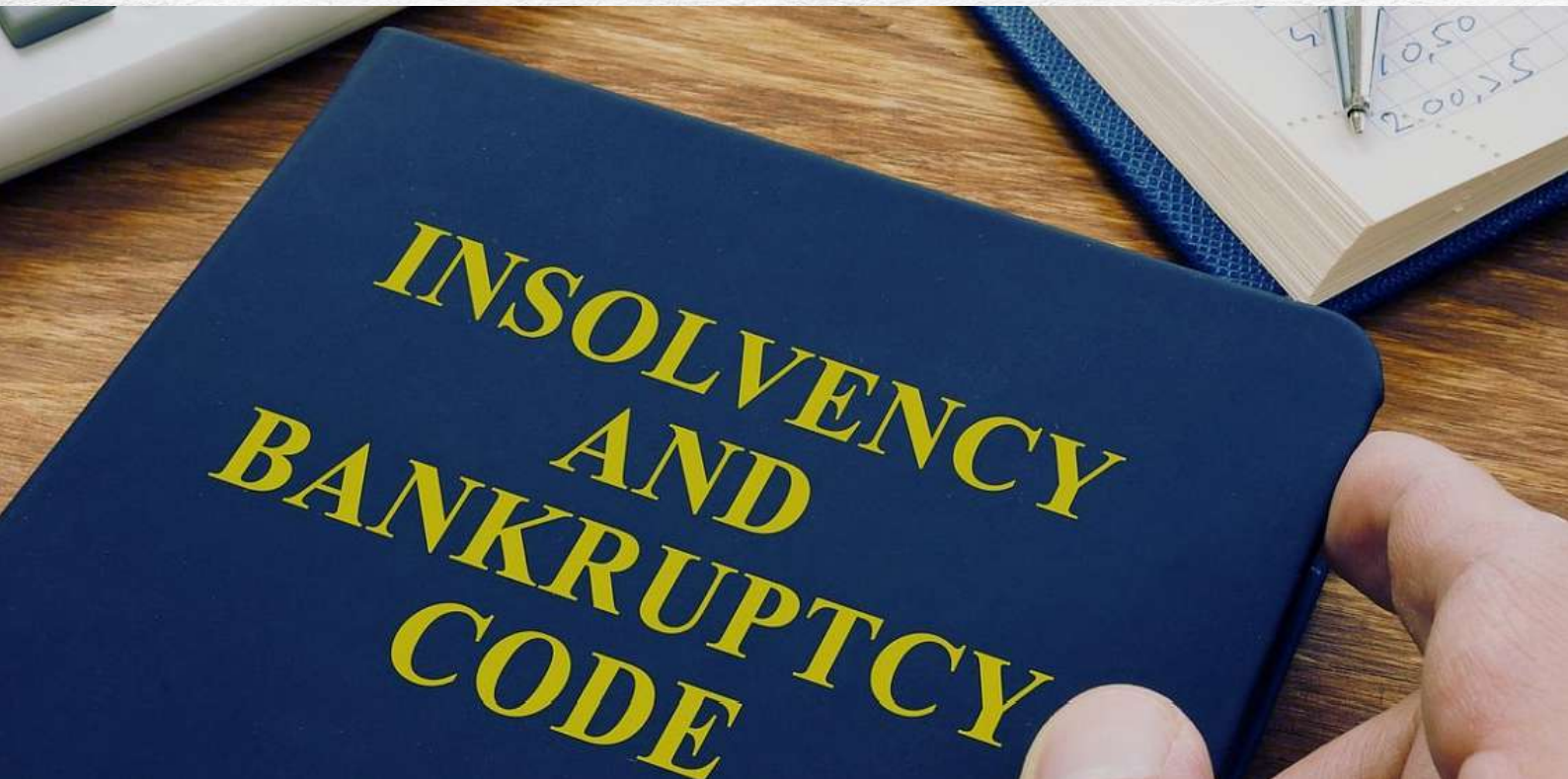


RESOLUTION TIMES

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NATURE AND CONFIDENTIALITY OF THE RESOLUTION PLAN

Insolvency and Bankruptcy Code, 2016 brought about the paradigm shift in the Indian insolvency regime. The Code aims for the revival of distressed companies through an insolvency resolution process. One of the most significant aspects which lie at the heart of the resolution process is the Resolution Plan.

As per Section 5(26) of the Code, “Resolution Plan means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.” Where a resolution applicant is a person who is interested in acquiring the corporate debtor through his proposed plan. However, approval of such a plan is subject to the requisite majority of approval of the Committee of Creditors.

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Thus, a resolution plan means a plan proposed by the Prospective Resolution Applicant who is eligible to submit a resolution plan as per Section 29A of the Code. Such a plan provides the mechanism for the successful acquisition of the corporate debtor and ensures that the plan is implementable, feasible, viable, and takes into account the interest of all the stakeholders.

Although there are several mandatory contents and checklists that need to be provided in the Resolution Plan, however, in this article we shall be dealing with the nature and confidentiality of the resolution plan.

Nature of Resolution Plan?

As mentioned resolution plan is submitted by the prospective resolution applicant (PRA) who intends to acquire the corporate debtor through Corporate Insolvency Resolution Process (CIRP). However, a pertinent issue that needs to be understood is what is the nature of the resolution plan? Is it a contract between the PRA and CoC or is it bound by the rigors of the Insolvency and Bankruptcy Code itself?

This question was itself answered by the Hon'ble Supreme Court in the landmark case of ***Ebix Singapore*** where the Apex Court analyzed the nature of a resolution plan and equated the process with the formation of the contract. It was observed that certain stages of the CIRP resemble the stages involved in the formation of a contract. Echoes of the process involved in the formation of a contract resonate in the steps antecedent to the approval of a Resolution Plan such as (i) the issuance of an RFRP may be equated to an invitation to offer; (ii) a Resolution Plan can be considered as a proposal or offer; and (iii) the approval by the committee of creditors may be similar to an acceptance of the offer.

The terms of the Resolution Plan contain a commercial bargain between the Committee of Creditors and the Resolution Applicant. There is also an intention to create legal relations with a binding effect. However, it is the structure of the Code that confers legal force on the Committee of Creditors' approved Resolution Plan.

The validity of the Resolution Plan is not premised upon the agreement or consent of those bound, but upon its compliance with the procedure stipulated under the Code. There is a lack of international consensus on the issue of whether instruments like CoC-approved Resolution Plans are contracts, prior to the Court's sanction.

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

In view of the lack of clarity in the BLRC Report and the absence of any specific provision in the Code or the regulations referring to a CoC approved Resolution Plan as a contract, the Supreme Court declined to hold that CoC-approved Resolution Plans will be governed by the Contract Act and common law principles governing contracts, save and except for the specific prohibitions and deeming fictions under the Code. Therefore, with the said judgement the nature of a resolution plan is profoundly established.

Confidentiality

Another very important facet of the resolution plan is whether they are confidential in nature or not. This question came up recently in the matter of Jet Airways (India) Limited vs Jet Airways India & Anr. (Company Appeal (AT) (Insolvency) Nos. 643 of 2021), the NCLAT, New Delhi decided whether a Resolution Plan (Plan) approved by the Adjudicating Authority (AA) is a public document or not.

The Appellant who is the association of the workmen of the Jet Airways India Ltd filed an appeal to direct the Resolution Professional to produce records that is Resolution Plan and its annexures with a full set of documents relating to the CIRP of the Corporate Debtor. Appellant raised the argument that the confidentiality in the CIRP proceeding as mentioned in IBC is very limited and the Code and Regulation clearly provide 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.

Whereas, the Respondent contended that the Resolution Plan is a confidential document and contains 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 member of CoC are not entitled to receive the copy.

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

ANSWER KEY FOR THE PREVIOUS QUIZ

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

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 to make an informed 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. Although NCLAT stated that the resolution plan cannot be made available to each and to anyone who has no genuine claim or interest in the process. Hence, the tribunal directed only the part of the plan which caters to the interest of the workmen and employees shall be made available.

Therefore, NCLAT has made it amply clear that once a plan is approved by them, it does not remain confidential in nature. Further, it seems that the stakeholders involved can seek the plan or part of the plan concerned to them. However, a Supreme Court ruling is yet to be made on such an issue and it shall be interesting to monitor what the Apex court holds on this particular issue.

LATEST JUDGEMENTS AND UPDATES

SUPREME COURT JUDGEMENTS

1. Claims not part of the Resolution Plan shall not survive post-approval of the plan.

The Hon'ble Supreme Court in the case of **M/s Ruchi Soya Industries Ltd. V. Union of India & Ors.** (Civil Appeal Nos. 447-448 of 2013) has observed that the claims which were not part of the resolution plan shall not survive post-approval of the plan.

The main contention of the Appellant is that the claim of the Respondent which was not lodged before the Resolution Professional (RP) cannot be considered at the stage post-approval of the resolution plan. It further referred to the case of **Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Ltd. & Ors.** and submitted that as per Section 31 of the Code, the Respondents were not entitled to claim any amount which was not part of the Resolution Plan.

The Apex Court upheld the submissions made by the Appellant and observed that the claims not part of the resolution plan or not submitted to the RP post the public announcement shall stand frozen and will not survive. Hence, the appeal was allowed.

2. Period of limitation shall be extended in case of a letter acknowledging the debt and the liability to pay.

The Hon'ble Supreme Court in the case of **SVG Fashions Pvt. Ltd v. Ritu Murli Manohar Goyal & Anr.** (Civil Appeal No. 4228 of 2020) has held that the period of limitation shall be extended in case of a letter acknowledging the debt and the liability to pay.

In the present matter, the Appellant has filed an appeal to challenge the impugned order of the NCLAT which has reversed the admission of a Section 9 application filed by the Operational Creditor (OC)/ Appellant on the ground of it being barred by limitation.

The Appellant contended that the date of default was of the year 2013 whereas the Respondent has issued a letter along with the 6 cheques dated 28.09.2015 thereby acknowledging its liability.

On the contrary, the Respondent has claimed that the letter was issued by another entity and not by the CD, hence cannot be used to save the limitation.

Further, it was also submitted that the cheques relied on by the OC were lost cheques and for the same, the application for stopping the payment has already been made by the CD.

The Adjudicating Authority (AA) observed that there was an acknowledgement on the part of the CD and thus, the application was admitted. However, the order was reversed in the appeal where the NCLAT observed that the cheques issued were of the date 05.12.2017 and hence, will not save the limitation.

In the appeal, the Apex Court observed that the NCLAT's order failed to observe the letter which was relied on by the OC as an acknowledgement on the part of the CD. Hence, the Court set aside the order of the NCLAT and restored the NCLT's order.

NCLAT JUDGEMENTS

1. Requirement of Notice on Personal Guarantor under the Code.

In the matter of **Dheeraj Wadhawan vs Union Bank of India**, the NCLAT decided whether the service of Demand Notice under the Code is required on the personal guarantor or not.

In the instant matter an application was filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 for initiation of insolvency resolution process against the personal guarantor. Previously, the personal guarantee was executed by the PG in favour of the credit facilities availed by the Corporate Debtor.

The lender invoked the deed of guarantee on account of default by the corporate debtor. Subsequently, Demand Notice was sent to the PG on his residential address.

When the Application under Section 95 came for consideration before the Adjudicating Authority on 07.12.2021, a submission was raised before the Adjudicating Authority that Demand Notice issued by the Bank having not been served on the Appellant Application need not be entertained.

Appellant's Contention:

It was submitted that at the time when notice is claimed to be served, the Appellant was in judicial custody. Hence, it was incumbent on

the Bank to serve notice at Taloja, Navi Mumbai. It is submitted that statutory rules require personal service and personal service having not been effected on Appellant the Company Petition is not maintainable.

Further, the personal service of the notice is mandatory and without personal service of notice Company Petition cannot be entertained and the Adjudicating Authority committed error in entertaining the Application under Section 95 by directing the Resolution Professional to submit report under Section 99. Notice on the Appellant was required to be served as per provisions of Order 5 Rule 24 of the Civil Procedure Code.

Respondent's Contention:

The Bank, who is a Respondent, contended that Demand Notice under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as '2019 Rules') has been duly served by post at the residential address of the Appellant which was received by adult member of the family of the Appellant i.e. his nephew Mr. Karthik Wadhawan, therefore service is complete and Application filed under Section 95 be entertained.

Decision of the Tribunal:

The NCLAT stated that Order 5 Rule 24 of the CPC shall not be applicable for effecting services under the Personal Guarantor Rules. In this particular case, it is also on the record that after service of the demand notice when

Company Petition was filed under Section 95, notices were issued by the Adjudicating Authority which were also duly served on the Appellant through his counsel on 19.01.2021. Company Petition under Section 95(1) was taken up by the Adjudicating Authority on 07.12.2021 before which date the Appellant was served and represented before the Adjudicating Authority.

Hence, the Demand Notice was duly served on the appellant.

2.Appointment of independent expert under Section 46 of the Code.

In the matter of **Radico Trading Ltd vs Tarun Batra**, the NCLAT a question came up whether the appointment of an independent expert under Section 46(1) of the Insolvency and Bankruptcy Code, 2016 is mandatory in nature or not.

An appeal is preferred before the appellate tribunal against the order of the Adjudicating Authority, wherein the AA vide an impugned order allowed the application filed by the Resolution Professional and declared two transactions as undervalued with the intent to defraud creditors and thereby directed to restore the amount back to the corporate debtor.

Earlier, application for initiation of CIRP process was initiated against the Corporate Debtor. Meanwhile the appellant claimed to purchase plant and machinery of the CD.

Subsequently, the relevant transactions were audited, and several irregularities were unearthed during such audit. Based on such report RP filed an application before the AA for the restoration of such property.

Appellant contends that they were bonafide purchaser for value and transaction ought not to have been declared undervalued transaction or cancelled. It is submitted that the bid was invited by the Corporate Debtor and three bids were received and the Appellant being highest bidder its bid was accepted. Further, it was stated that no expert was appointed by the Adjudicating Authority and without there being any expert opinion, decision has been taken.

In reply to such arguments, the RP stated that such transactions were not bonafide and were bought at a considerably lower value.

The NCLAT after hearing the arguments stated that after the perusal of the report it cannot be refuted that such transaction were undervalued and with the intent to defraud creditor. Further, the Appellate Tribunal held that the power under Section 46(2) is enabling power and the expression used “may require” indicates that it is not necessary that for all applications filed under Section 46(1) there has to be mandatory expert appointed by the Adjudicating Authority.

Therefore, the order of AA was upheld by the NCLAT and the appeal was dismissed. Further, NCLAT allowed the Appellant to file before the Adjudicating Authority to take appropriate measures for refund back of the amount from such parties.

3. Power to Issue Non-Bailable Warrant.

NCLAT in the matter of **Vikram Puri (Suspended Director) & Anr. v. Universal Buildwell Private Limited & Anr.**, decided whether the Adjudicating Authority is vested with the power to issue non-bailable warrant against the promoters of the corporate debtor.

An appeal is filed under Section 61 of the Code against the impugned order of the AA, wherein the AA rejected the application filed for cancellation of non bailable warrant for arrest issued against the appellant.

Earlier, application under Section 7 of the Code was admitted against the CD and the CIRP was initiated. Subsequently, an application was preferred by the Resolution Professional under Section 19 of the Code to ensure the co-operation of the suspended management. AA in this application ordered for the co-operation of the suspended management and also issued non-bailable warrant against such persons.

Aggrieved by the order Suspended Directors moved an Application for cancellation of the Non-Bailable Warrants which Application was dismissed by the Adjudicating Authority and were also directed to handover all the documents. Hence, appellant preferred this appeal.

Appellant in this appeal stated that majority of documents as asked for by Resolution Professional have been supplied by the Appellants and their appearance and surren-

-der was not necessary and their Application to cancel Non-Bailable Warrants has been wrongly rejected.

Further, the Adjudicating Authority does not have any jurisdiction to issue Non-Bailable Warrants and the AA is not bound by procedures laid down under the Civil Procedure Code.

It is further submitted that in event non-compliance with Section 19 of the Code, the defaulting party may be liable for punishment in terms of Section 70 of the Code but due to non-compliance, non-bailable warrant cannot be issued.

After hearing the arguments of the appellant, the NCLAT held that the National Company Law Appellate Tribunal Rules 2016 clearly allows the NCLAT to apply provisions of the CPC in cases pertaining to summons and enforcing the attendance of any person.

It stated that the CPC empowers courts to issue warrants which may be either bailable or non-bailable, against any person who fails to cooperate by evading repeated summons. In this case, the NCLAT justified the AA's actions by pointing out that the suspended directors had been given several opportunities to cooperate and they did not.

Therefore, the AA was well within its jurisdiction to issue non-bailable warrants against the suspended directors for failing to cooperate even after repeated opportunities.

4. Whether oral contract is sufficient to prove the existence of Financial Contract under AAA Rules, 2016.

In the matter of **Bankey Bihari Goyal Vs. Ambrane India Pvt. Ltd. & Anr.**, an interesting question regarding the application under Section 7 application under the Code for initiation of Corporate Insolvency Resolution Process (CIRP) on the basis of oral contract can be admitted came up before the NCLAT.

In the instant case the appeal is preferred against the order of the Adjudicating Authority, wherein the AA admitted the Section 7 application and CIRP was initiated against the Corporate Debtor.

Earlier, an amount of Rs. 1,25,00,000/- was unsecured loan disbursed to the Corporate Debtor against interest at 9% per annum to be compounded on 31.03.2018 and to be repaid on or before 31.12.2018.

The said amount was disbursed through NEFT made by the name of BJ Infotech on 30.01.2018. After the due date, FC furnished a notice of repayment of the loan to the Corporate Debtor and on failure of such repayment application under Section 7 was preferred.

As per the appellant, it was stated that no loan has been taken by the Corporate Debtor from the Financial Creditor and no written agreement has been produced by the Financial Creditor between the Financial Creditor and the Corporate Debtor with regard to grant of unsecured loan. However, it was not denied that amount was disbursed by BJ Infotech.

Further, the appellant put forth the argument that there was no written contract for disbursement of the loan.

He submits that as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, the 'financial contract' as defined in Rule 3(1)(d) includes the tenure of the debt, interest payable and date of repayment which having not been proved herein, there was no financial contract and the Adjudicating Authority committed error in admitting the Application under Section 7.

Rule 3 (d) of AAA Rules, 2016 states that (d) "*financial contract*" means a contract between a corporate debtor and a financial creditor setting out the terms of the financial debt, including the tenure of the debt, interest payable and date of repayment;"

The NCLAT after hearing the arguments stated that the ingredients which are required to be fulfilled for contract to be treated as financial contract but the Rule 3(d) or any of the provisions in the Code does not indicate that a formal written contract is necessary for treating a contract to be a financial contract.

It is well settled that contract can be entered both orally as well as by written contract and all ingredients of financial contract can be very well proved even if there is an oral contract.

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

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 ensu-

-ring asset maximisation is the underlying principle of the IBC, which cannot be overridden on account of meagre delays induced by a force majeure event.

6. AA under the Code has the power to issue directions to the RP for providing the claimant with the copy of claims of other claimants.

NCLAT in the case of Acrow Construction Pvt. Ltd. v. Punjab National Bank & Ors. (Company Appeal (AT) (Insolvency) No. 74 & 75 of 2022) has observed that the Adjudicating Authority (AA) under the Code has the power to direct the Resolution Professional (RP) to allow for inspection of claims of the other Financial Creditors (FCs) and give copies of the same.

The Appellant has filed the appeal challenging the order passed by the AA which has allowed for the inspection and further to give copies of the claims of other FCs to the Respondent. The Appellant claimed that the direction given by the AA is not in accordance with the law and further stated that Section 21(9) of the Code only provides for members of the COC to receive the documents from the RP.

The NCLAT observed that Regulation 13(2) of the CIRP Regulations, 2016 provides for verification of the claims and the same is available for inspection to the claimants, members, partners, directors and guarantors of the CD. It upheld the submission of the RP which provides that the RP himself does not have the power to supply the copies of

the claims under the Code unless the same is asked by the COC members. Further, the Appellate Tribunal upheld the impugned order of the AA which has given directions to the RP for giving the copies of the claim documents to the Respondents. Also, it was held that the AA has the jurisdiction to issue such directions.

7. Financial Creditor is entitled to claim the period of limitation from the date of the last payment made.

NCLAT in the case of Atharva Auto Logistics Pvt. Ltd. v. Intec Capital Ltd. & Anr. (Company Appeal (AT) (Insolvency) No. 303 of 2022) has held that the Financial Creditor (FC) is entitled to claim the period of limitation from the date of the last payment made.

The Appellant in the present case is challenging the impugned order passed by the Adjudicating Authority (AA) by which the CIRP has been admitted against the CD under Section 7 of the Code.

The Appellant submitted that under Part IV of the application the date of default was of August 25, 2017, and the application has been filed on August 28, 2020, which is 3 years after the date of default.

On the contrary, the Respondent submitted that the limitation period of 3 years shall begin from the date of the last payment made by the Appellant, i.e., on July 31, 2018, and hence, the application is not barred by limitation.

The NCLAT acceded to the arguments of the Respondent and observed that the payment

details were brought to the notice of the AA with the application and hence, for the same, the application cannot be said to be barred by limitation.

It was also observed that the date of default is still August 25, 2017, however, the payment details brought in by way of the ledger accounts along with the application have extended the limitation period and thus, the application was well within the limitation.

8. President of the NCLT has the right to transfer the cases as under Rule 16(d) of the NCLT Rules, 2016.

NCLAT in the case of Arun Kumar Jain (Ex-Director) v. Rakesh Bhatia (Liquidator) (Company Appeal (AT) (Ins.) No. 365 of 2022) has observed that the President of the NCLT has the right to transfer the cases as under Rule 16(d) of the NCLT Rules, 2016.

The Appellant has filed an appeal against an impugned order passed by the Adjudicating Authority (AA) in which the application filed by the Respondent in Bench III was tagged along with other applications pending in Bench II.

It was contended that the transfer of such application is not in consonance with Rule 146 of the NCLT Rules which provides for a reasonable opportunity to the parties before a matter is disposed of.

On the contrary, the Respondent argued that Rule 16(d) of the NCLT Rules which provides for the function of the President to

transfer the case from one bench to another bench, is the prerogative right of the President of the NCLT.

The NCLAT observed that the power under Rule 16 has been duly exercised by the President and the requirement of a reasonable opportunity to parties under Rule 146 shall not sustain. Hence, the appeal was dismissed

9. Withdrawal of the CIRP within 24 hours of its admission will not allow the IRP to claim its fees.

NCLAT in the case of Sh. Manoj Kumar Singh v. M/s EBPL Ventures Pvt. Ltd. (Company Appeal (AT) (Ins.) NO. 294 of 2022) has observed the withdrawal of the CIRP within 24 hours of its admission will not allow the IRP to claim its fees. The Appellant has filed an I.A. in the main C.P. to bring on record the settlement agreement that has been reached between the parties as per which the dispute has been settled and payment has been made. It was argued by the IRP that he should be entitled to miscellaneous expenses.

The NCLAT observed that since the order of initiating CIRP was quashed within 24 hours of its admission wherein no action of formulation of COC nor any other action was taken by the IRP apart from the publication of the public notice, hence he shall not be entitled to any fees apart from the expenses incurred for the public announcement. Thus, the appeal was disposed of by way of aforesaid direction.

10. Liquidator has the power to reject the claim if it does not appear in the books of the CD.

NCLT Chennai in the case of Mr T.S. Parthasarathy v. Mr S. Palaniappan (Liquidator) (IA(IBC)/977(CHE)/2020 in CP(IB)/129(CHE)/2018) has observed that the liquidator has the right to reject the claims if the same does not appear in the books of account of the Corporate Debtor (CD).

The Applicant in the present case has filed an application under Section 42 of the IBC for direction to the liquidator for admission of its claims. The petitioner argues that he has invested in the gold scheme launched by the CD before the CD went into insolvency and hence, is liable to receive the same by way of claims filed in the liquidation of the CD.

On the contrary, the Respondent argued that the claim of the Applicant exists but is not in the books of the CD rather than in the books of the partnership firm or the other group concern of the CD. It was also stated that the Applicant has not produced any single evidence from where it can be observed that the amount was received by the CD. Hence, it was contended that the Liquidator was apt in rejecting the claim under Section 40 read with Regulation 16-30 of the Liquidation Regulations under the IBC.

Having heard the arguments from both sides, the Adjudicating Authority (AA) had observed that the action of the liquidator in rejecting the claim on the ground of it being not reflected in the books of the CD is justified. Further, it was also observed that the money invested by the Applicant was infused in the other group concern of the CD and hence, the same cannot be relevant for the present liquidation process.

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