AVM RESOLUTION PROFESSIONALS

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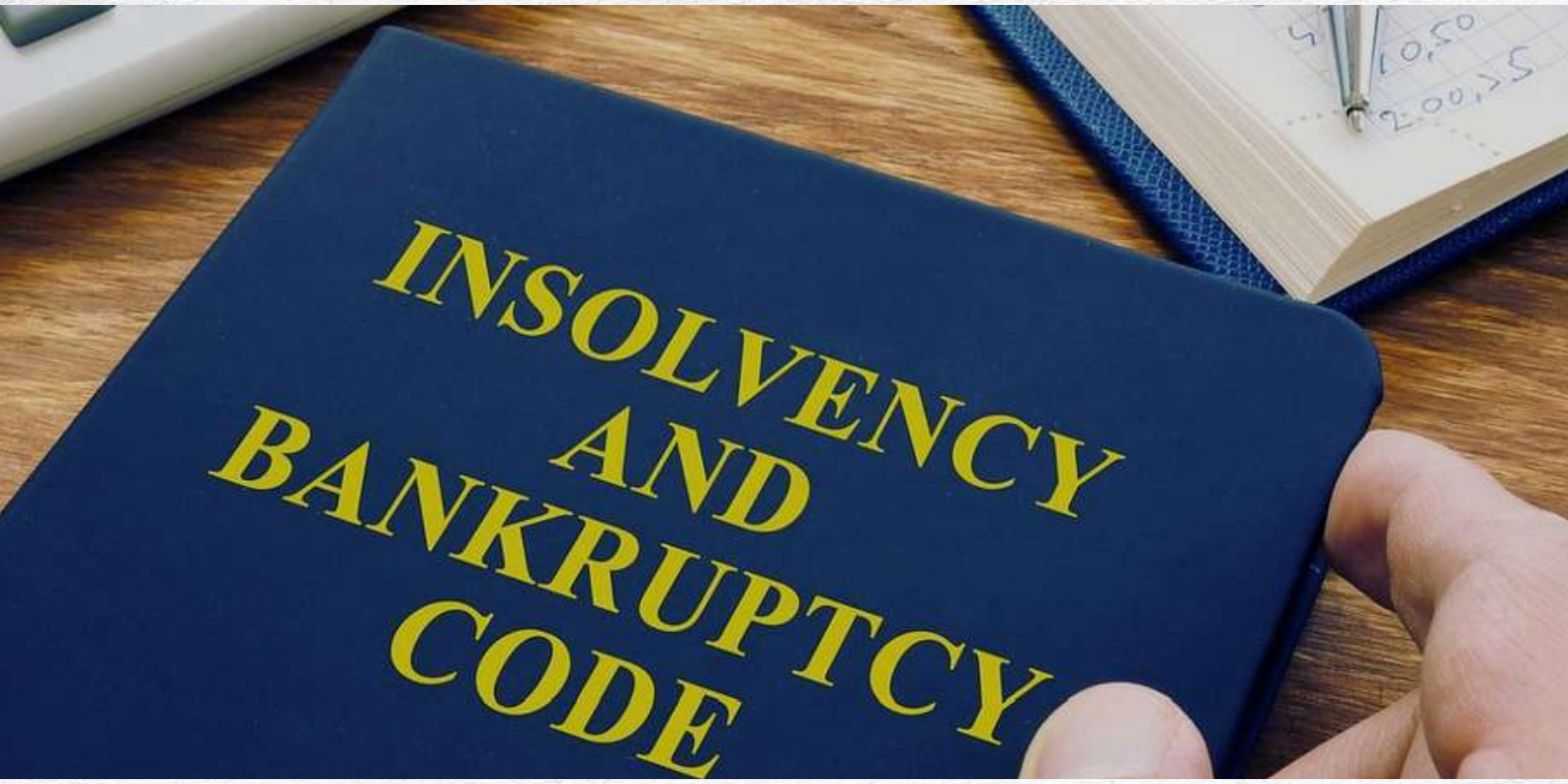

LATEST JUDGEMENTS AND UPDATES

SUPREME COURT JUDGEMENTS

State Tax Officer v. Rainbow Papers Limited

An interesting issue arose in the recent case of **State Tax Officer v. Rainbow Papers Limited**, wherein the Hon'ble Supreme Court dealt with the question as to whether the provisions of the Insolvency and Bankruptcy Code, 2016, specially section 53, overrides section 48 of the Gujarat Value Added Tax Act, 2003.

The short question raised by the appellant in this appeal is, whether the provisions of the IBC and, in particular, Section 53 thereof, overrides Section 48 of the GVAT Act.

WHAT'S ~~INSIDE THIS~~ ISSUE:

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The appellant filed a claim before the RP in the requisite Form B, claiming that Rs.47.36 crores was due and payable by the respondent to the appellant, towards its dues under the GVAT Act. The claim was filed beyond time. The Adjudicating Authority reject the application holding that the Government cannot claim first charge over the property of the Corporate Debtor

The Appeal was then filed by the appellants and Appellate Authority (NCLAT) have also held that the claim of the State is belated and that the Tax Department of the State does not fall within the meaning of "Secured Creditor".

However, on appeal the Hon'ble Supreme Court held that Section 48 of GVAT is a non-obstante clause and creates a statutory first charge on the property of the dealer in favour of tax authorities against any amount payable by the dealer on account of tax, interest or penalty for which he is liable to pay to the Government.

The Hon'ble Supreme Court further observed that a resolution plan which does not meet the requirements of Sub-Section (2) of Section 30 of the IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor.

NCLAT ORDERS

1. CBRE South Asia Pvt. Ltd. Vs. United Concepts and Solutions Pvt. Ltd.

In the matter of ***CBRE South Asia Pvt. Ltd. Vs. United Concepts and Solutions Pvt. Ltd***. Company Appeal (AT) (Insolvency) No. 188 of 2022, the appeal arose against the impugned order pass by NCLT, New Delhi by which order the Adjudicating Authority has rejected the Section 9 Application filed by the Appellant.

The appellant claimed to be an Operational Creditor and served a notice under Section 8 on the corporate debtor. Post which the appellant filed Application under Section 9 claiming total amount of Rs.1,39,84,400/-. The principal amount in the application the applicant/Appellant has claimed was Rs.88,50,886 while an amount of Rs.51,33,514 was shown as interest.

INSOLVENCY TRIVIA

1 The RP shall consolidate claims under the Individuals and Partnerships Insolvency resolution process within …. Days of public announcement

(a) 21
(b) 30
(c) 45
(d) 60

2) . Insolvency professional shall make a public announcement in the prescribed Form –

(a) 14 days
(b) 21 days
(c) 7 days
(d) 30 days

3) The RP shall call a meeting of the committee of creditors by giving not less than ___ days notice

(a) 45
(b) 60
(c) 180
(d) 120

4) Which of the following entity is not eligible to be an Insolvency Professional Entity?

(a) Unregistered Partnership Firms
(b) Company
(c) LLP
(d) None of the above

The Adjudicating Authority observed that for the purposes of threshold the amount of interest cannot be added and since the applicant only have claim of Rs.88,50,886/-, it does not fulfil the threshold limit of Rs.1 Crore and application is liable to be rejected on this ground only. However, relying on a recent order in the matter of Prashant Agarwal's Case vs. Vikash Parasrampuria & Anr which stated that "the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself."

The Hon'ble NCLAT thus opined that the rejection of the application under Section 9 on the above ground is erroneous and therefore set aside the impugned order passed by the Adjudicating Authority.

2. Wadhwa Rubber Vs. Bandex Packaging Pvt. Ltd

In the matter of Wadhwa Rubber Vs. Bandex Packaging Pvt. Ltd. Company Appeal (AT) Company Appeal (AT) (Ins.) No. 576 of 2021, the appeal arose against the order of the Adjudicating Authority by which an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 has been dismissed.

The short issue to be answered by the NCLAT was whether the appeal filed was within the stipulated time frame or not?

The appeal was filed after a lapse of one year the Appellant was asked as to why the appeal was not filed within 30 days from the date of the order dated 08.01.2020. The Appellant was asked as to why the appeal was not filed within 30 days from the date of the order dated 08.01.2020.

It was argued by the respondents that, the certified copy appears to have been applied on 10.02.2021 and was prepared on 17.02.2021 but the Appellant spent almost two months even in taking the certified copy from the Tribunal. It is well settled that the limitation is to be counted not from the date of delivery of the certified copy but from the date of preparation of the certified copy. In this case it was prepared on 17.02.2021 and if the limitation is to be counted from 17.02.2021 the same had expired much earlier than the date of filing of the appeal on 04.08.2021.

Thus, the NCLAT held that the appeal filed by the Appellant is without limitation provided under Section 61 of the Code of a period of 30 days and Section 61(2) proviso an additional period of 15 days for which discretion is granted to the Appellate Authority to condone only on being satisfied that there is a sufficient cause for condonation of delay.

ANSWER KEY FOR THE PREVIOUS QUIZ

1.(a) 28.05.2016

2.(a) Interim Resolution Professional

3.(c) 180 days

4.(d) Operational creditors whose dues are less than 10% of the total debt

3. Shri Ramachandra D. Choudhary v. Marshall Multiventures (I) Pvt. Ltd

In the matter of **Shri Ramachandra D. Choudhary v. Marshall Multiventures (I) Pvt. Ltd** COMPANY APPEAL (AT) (INSOLVENCY) No. 810 of 2020, the appeals have been preferred by the Liquidator of the 'Corporate Debtor, aggrieved by the Orders dated 26.06.2019 passed by the Learned Adjudicating Authority wherein the application were dismissed by the Adjudicating Authority on the ground that the Applications were not maintainable as they have been filed by the Liquidator for recovery of outstanding amounts from 'Sundry Debtors' under Section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016.

The AA held that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing the Judicial Proceedings.

Therefore, to adjudicate whether the amount is due and payable by the 'sundry debtors' who have raised disputes, would require calling for evidence and cannot be proceeded under the Code. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution or other Legal Proceedings, Civil or Criminal, in the name or on behalf of the 'Corporate Debtor'.

The Hon'ble NCLAT the ratio in Gujarat Urja Vikas Nigam Ltd. Vs. Mr. Amit Gupta held that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. The NCLAT therefore, did not find any infirmity in the order of the AA.

4. Insolvency and Bankruptcy Board of India Vs. Aditya Kumar Proposed IRP of Adjoin Built & Developers Pvt. Ltd

In the matter of **Insolvency and Bankruptcy Board of India Vs. Aditya Kumar Proposed IRP of Adjoin Built & Developers Pvt. Ltd** Company Appeal (AT) (Insolvency) No. 769-770 of 2021, the appeal was preferred by the Appellant being aggrieved by the orders passed by the Adjudicating Authority whereby Adjudicating Authority directed IBBI not to initiate any enquiry till further orders, if any enquiry is initiated, the same be halted till further direction from Court.

The Appellant is a statutory body established under Section 188 of the Code and argued that the Ld. Adjudicating Authority has exceeded beyond the powers vested upon it by virtue of the Code. The Appellant argued that the Appellant Board is an independent body which has been vested with exclusive jurisdiction to regulate the functioning of an Insolvency Professional and also to carry out inspections and investigations on IPs and pass any orders which may be required for compliance of the provisions of the Code and the regulations issued hereunder.

It was further argued that as per the law laid down and interpreted by Hon'ble Supreme Court as well as this Appellant Tribunal, it is now a well settled principle that the Adjudicating Authority does not have power to either quash or stay the proceedings initiated by the Appellant Board. Hon'ble Supreme Court in the case of 'K. Sashidhar Vs. Indian Overseas Bank & Ors.' has clarified that the Adjudicating Authority has been endowed with limited

jurisdiction as specified in the IBC and that it cannot act as a court of equity or exercise plenary powers.

The Hon'ble NCLAT relying on the above arguments and case laws observed that the impugned orders passed by the Adjudicating Authority cannot be sustained in the eye of law, therefore, thereby setting aside the impugned order of the AA.

5. Agarwal Agencies Pvt. Ltd. & Ors. Vs. Dove Infrastructure Pvt. Ltd.

In the matter of **Agarwal Agencies Pvt. Ltd. & Ors. Vs. Dove Infrastructure Pvt. Ltd.** Company Appeal (AT) (Insolvency) No. 968 of 2022, the Appeal has been filed against the order passed by the Adjudicating Authority by which Section 7 Application filed by the Appellant has been rejected.

The Appellant filed Section 7 Application claiming Financial Debt, placingreliance on an MOU entered between the Appellant and M/s ABW Infrastructure Ltd. (Developer) for developing a land. The Adjudicating Authority after hearing the parties rejected the Section 7 Application.

It was argued that in view of the MOU entered between the Appellant and M/s ABW Infrastructure Ltd., the Corporate Debtor is obliged to make payment to the Appellant. The Ld. Adjudicating Authority after pursuing the MoU observed that "*Admittedly, the Memorandum of Undertaking was executed between M/s. ABW Infrastructure Limited and the present Applicant and the respondent was in no way connected to the MOU. There is no evidence on record to show that the money in question was in fact paid to present respondent out of the said agreement.*"

The Hon'ble NCLAT upheld the order of the Ld. AA by observing that the disbursement against time value of money is against M/s ABW Infrastructure Ltd. and not against the Corporate Debtor and therefore the Section 7 is not maintainable, thereby dismissing the Appeal.

6. Bharat Hotels Ltd. v Tapan Chakroborty

The NCLAT, New Delhi in the case of **Bharat Hotels Ltd. v Tapan Chakroborty** rejected the appeal and held that section 18 of the code read with Regulation 34 of the Insolvency Resolution Process for the Corporate Person envisages the duty of IRP in relation to disclosing the item wise resolution process cost in manner prescribed by IBBI and thus the application does not have any locus standi or right under Section 18 read with Regulation 34A of Insolvency Resolution Process for Corporate Person.

In this case the appellant being the Financial Creditor (FC) holding 30.07% voting share in COC. A resolution was passed by 66.93% vote share for liquidation of the corporate debtor (CD) and on this the appellant filed before the AA to direct the RP to disclose item wise insolvency resolution process and to call for the entire records of RP w.r.t liquidation application.

The AA rejected the application filed by the appellant stating that Section 18 read with regulation 34 A of the Insolvency Resolution Process for Corporate Person envisages the duty of IRP in relation to disclosing the item wise resolution process cost in manner prescribed by IBBI and thus the application does not have any locus standi or right under Section 18 read with Regulation 34A of Insolvency Resolution Process for Corporate Person.

The appellant contended that he wanted to know the steps taken by RP in insolvency resolution process and that no steps for auditing or valuation report has been taken.

The NCLAT held that the appeal filed by the appellant was indirectly for challenging the liquidation. The appellant being the minority stakeholder cannot resist the passing of resolution. Furthermore, the NCLAT upheld the decision of the AA on the same ground that the application does not have any locus standi or right under Section 18 read with Regulation 34A of Insolvency Resolution Process for Corporate Person. Thus, the appeal was rejected.

NCLT ORDERS

1.Ramesh D. Shah v. Vijay Pitamber Lulla & ors.

Appeal arose out of the order of the Adjudicating Authority wherein the applicant has prayed for the appropriate directions against the Respondents for not allowing normal operations in the Current Account opened by the Applicant.

The applicant was the successful resolution applicant, and prayed for allowing all normal operations in current account for smooth implementation of the Resolution Plan for conducting transactions towards implementation of the Resolution Plan.

However, the Respondents did not upgrade the asset classification of the Company's account to "Standard" as per Reserve Bank of India norms as the management remained the same. The contentious issue was that the CD was an MSME wherein the directors are permitted to give a Resolution Plan for the Arevival of the Corporate Debtor or in other words the existing management is allowed to revive the Company by giving a Resolution Plan.

The Applicant submitted that inspite of approval of the Resolution Plan by this Tribunal and having being given clean slate to start afresh, if the account of the Corporate Debtor is not given the Standard Asset classification then the same will appear in the CIBIL report, which will have a direct bearing on the Corporate Debtor's business operations.

Due to this, the Corporate Debtor will face difficulty in raising working capital from the market or any other Bank or Foreign Investors.

Furthermore, Banks will refrain from opening any new accounts for the Corporate Debtor.

The respondent argued wherein its directed that account can be upgraded as standard after the change in ownership is implemented. As in the present case there is no change in ownership so account can be upgraded to standard only on discharge of full settlement amount.

The Hon'ble NCLT in view of the Master Circular of RBI dated 01.10.2021, observed that the account can be upgraded as standard after the change in ownership is implemented. The objective of this is to provide a clean start to the Corporate Debtor.

Therefore, once the resolution plan is approved by the Adjudicating Authority, the management of the Corporate Debtor shall be considered as fresh, even if the promoters pf the Corporate Debtor remain the same.

2. Mansi Oils & Grains Pvt. Ltd.

The NCLT, Kolkata declared **Mansi Oils & Grains Pvt. Ltd.** as dissolved.

In this case the application was filed under Section 54 of IBC by the Liquidator to dissolve the CD. An application under Section 7 of IBC by the United Bank of India (Financial Creditor) was filed against the CD and subsequently AA ordered for liquidation and appointed the liquidator. Public announcement was made by the liquidator and new bank account was opened as per the regulation 41 of Liquidation Process Regulations. By various orders extensions were granted. The liquidator received various claims of stakeholders and submitted the list of stakeholders which was uploaded on the website. Multiple e-auctions were also conducted by the liquidator.

Further, the liquidator also filed 12 progress reports from time to time. The Final Report with compliance certificate in Form H has also been filed along with dissolution application which disclosed all the material facts and information. The copy of distribution assets shows realization amount amongst the stakeholders. A copy of bank statement of the liquidation account was also filed.

The affairs of the CD were liquidated after realizing the assets and distributing the amount to the stakeholders as in compliance with Section 53 of the IBC.

The NCLT after hearing the liquidator and perusing the documents was satisfied that CD is completely wound up and assets were completely liquidated and thus, the CD was declared being dissolved.

3. Bajaj Rubber Company Pvt. Ltd. v Saraswati Timber Pvt. Ltd.

The NCLT, New Delhi in the case of Bajaj Rubber Company Pvt. Ltd. v Saraswati Timber Pvt. Ltd. held that breach of terms of terms and conditions of payment according to Settlement Agreement does not come under the ambit of operational debt under section 9 of IBC.

In the present case, an application under section 9 of IBC was filed by Bajaj Rubber Company Pvt. Ltd for initiation of CIRP against Ace Footmark Pvt. Ltd. (Corporate Debtor). Subsequently, a Settlement Agreement was executed between the Operational Creditor and CD and the application was withdrawn by the OC.

In the terms of Settlement Agreements, it was clearly mentioned and approved by AA that in case of default the application can be revived. The CD failed to adhere with the Settlement Agreement and hence OC filed an application to revive the CIRP.

It was contended by the applicant that the present application has been filed for revival of CIRP on the ground of breach of terms and conditions of the Settlement Agreement.

The NCLT held that breach of terms of terms and conditions of payment according to Settlement Agreement does not come under the ambit of operational debt under section 9 of IBC. It referred to the judgment of M/s Ahluwalia Contracts (India) Ltd. v M/s Logix Infratech Pvt. Ltd., wherein it was held that breach of settlement agreement does not form part of the definition of Operational Debt envisaged in IBC.

Hence, CIRP cannot be initiated in furtherance of breach of settlement agreement. The remedy for the same have to be taken elsewhere.

4. Rakesh Gupta v Nitin Narang, Liquidator of M/s Gupta Marriage Halls Pvt Ltd

The NCLAT, New Delhi in the case of **Rakesh Gupta V Nitin Narang** held that once all the conditions mentioned under section 33(2) of IBC are fulfilled, the Adjudicating Authority (AA) has no option but to order for initiation of liquidation proceedings.

Furthermore, it was held that after the liquidation proceedings are initiated, the status of suspended directors comes to an end and are deemed under discharge notice.

In the present case, Punjab National Bank who is the Financial Creditor (FC) filed an application for initiation of CIRP against the Corporate Debtor (CD) UNDER Section 7 of IBC. The application was accepted and CIRP was initiated but no resolution plans were approved. As per the authorization of the COC, the Resolution Professional (RP) filed a petition under Section 33(2) of IBC. The application was accepted by the AA but the same has been assailed by the appellant i.e, the suspended directors before NCLAT.

The appellant contended that the basic objective of IBC is to continue CD as a going concern and that the RP did not exhaust all the remedies and hurriedly approached the AA for liquidation. On the other hand, the Respondent argued that appellants are not entitled to maintain the appeal as after initiation of liquidation proceeding officers/employees of the Corporate Debtor are considered to under discharge notice and the appellants being the Suspended Director lost their status quo.

The NCLAT held the proceeding under IBC have to be concluded in time bound manner. In the present case even though time beyond 90 days was granted to the COC no Resolution Plan was approved and hence RP had no alternative than to proceed with liquidation application.

Furthermore, the Tribunal held that once the conditions mentioned under Section 33(2) are fulfilled the Tribunal has no option but to accept the application as word ‘shall’ has been used. Also, COC approved the liquidation application by 100% voting.

It was further held that the status of appellant as suspended director was only available till completion of CIRP. The suspension of director of a Corporate Debtor comes to an end after conclusion of proceeding initiated either under Section 7 and Section 9 of IBC. Once liquidation proceeding is initiated under Section 33(2) of IBC, officers/employees and workmen of the Corporate Debtor shall be deemed to be under discharge notice.

5. Sumant Kumar Gupta v COC of Vallabh Textile Company

The NCLAT, New Delhi in the case of Sumant Kumar Gupta v Committee of Creditors of M/s Vallabh Textile Company Ltd. held that the Committee of Creditors (COC) is not required to record any reason for replacing the Resolution Professional (RP) neither the RP can claim it as a right to be given reasonable opportunity to be heard when he is replaced.

In the present case, the Financial Creditor (FC) filed an application for the replacement of RP and appointment of Mr. Rajiv Khurana as new RP. The AA accepted the application and the RP was replaced and hence an appeal was filed by the appellant in the NCLAT.

The appellant contended that he was entitled for the opportunity to be heard in the application in consonance with the principles of natural justice and that Section 27 f IBC which provides for replacement of RP does not exclude applicability of natural justice.

The respondent on the other hand contended that Section 27 does not contemplate any opportunity to be given to the RP by the AA before passing order approving resolution of COC for replacement of RP.

The NCLAT referred to the case of Punjab National Bank vs. Kiran Shah, IRP of ORG Informatics Ltd. and Bank of India vs. Nithin Nutritions Pvt. Ltd., wherein it was held that COC is not required to record any reason or ground for replacing RP and AA is not open to interfere with the decision of COC. As per Section 27, the RP can be replaced if the resolution is passed at the meeting of COC by vote of 66% voting share.

6. Malay Mahanti v. Pinakin Shah and Ors.

Background:

An application filed by financial creditor Invesco Asset Management (India) Pvt. Ltd. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor, and Mr. Pinakin Shah was appointed as Interim Resolution Professional (IRP). Thereafter IRP constituted CoC and the CoC in its first meeting held on 10.05.2021 decided to appoint Mr. Shailendra Ajmera as Resolution Professional. However, in an application was filed by CoC for replacement of Resolution Professional. Further, no application was filed for replacement of IRP, and thus IRP conducted CIRP of the Corporate Debtor and in pursuant of approval of resolution plan by CoC by 98.88% voting, and filed application for approval of Resolution Plan before Adjudicating Authority, thereafter, application was filed by said shareholders, the Applicant of the present case.

Contentions:

The Applicants contends that, the said application has been filed pursuant to the letter that has been sent to NSE and BSE, to inform regarding the conclusion of e-voting, on the resolution plan submitted by Reliance Industries Limited jointly with Assets Care & Reconstruction Enterprise Limited has been duly approved by CoC, and it is proposed in the resolution plan that existing share capital of the Corporate Debtor shall be reduced to zero and the Corporate Debtor will be delisted from the stock exchanges i.e. BSE and NSE.

As the shareholders of the said corporate debtor, it the right to know about the approved resolution plan, and hence, same should be published in the website of the company. Further, the resolution plan must provide exit opportunity to the existing shareholders at a specified price as per SEBI (Delisting of Equity Shares) Regulations, 2021.

In reply to the contentions of the Appellant, the respondent replied that the Resolution Plan is a confidential document and also the provisions of the Code do not permit the disclosure to any person who is not a member or participant of the CoC. Further, the delisting and reduction of existing share capital of Corporate Debtor is permitted under the Code and is as per the applicable laws including Companies Act and applicable regulations issued by Securities and Exchange Board of India (SEBI).

Further, commercial decision of the CoC cannot be evaluated or analyzed by the Adjudicating Authority and shall not be sub-judice.

Further, the appellants replied to the contentions put forward by respondents, that during the course of CIRP there have been various media leaks with regard to the proposed Resolution Plans received by the IRP, thus there have been breach of confidentiality under the provisions of IBC. Further, no action was taken upon it by the IRP despite several intimation from the appellants.

Also, before the appointment of IRP, his name was reported by three banks in the list of "Willful defaulters" as per RBI master circular on willful defaulter, and criminal proceedings are also persisting against the IRP in High Court of Gujrat, and thus IRP is not fit for to continue in the position of IRP.

Further, the plan approved is not accordance to the interest of all the shareholders which holds 95% of the share of the company.

Issues:

1. Whether the shareholders are entitled to get the copy of the resolution plan, minutes of CoC Meetings and copy of approval of resolution plan?

2. Adjudication Application has the power to intervene the commercial decision of CoC?

3. Adjudication Application has power to set aside the CIRP initiated in pursuance of its order?

Held:

With regards to the CIRP process the tribunal is of the view that there is no provision under the Code which entitle shareholders of the Corporate Debtor to have a copy of the minutes of CoC meeting or copy of resolution plan or access to any other confidential document with regard to corporate insolvency resolution process of the Corporate Debtor.

In the instant matter the CoC in its commercial wisdom with 98.88% voting right has approved the resolution plan. Admittedly approved resolution plan provides for delisting of existing shares of the Corporate Debtor.

Further, the code has no provisions under the Code which empowers Adjudicating Authority to recall its own order, which has reached finality and CIRP is progressing for resolution. Thus, Adjudicating Authority does not have appropriate jurisdiction to question the CoC commercial wisdom.

7. IDBI Bank v/s Mamta Binani

Background

The appellant filed is a CoC member and Financial Creditor of the Deccan Chronicles holdings limited, (corporate debtor). The application has been filed contending that the Resolution Plan dated 11.12.2018 submitted by Vision India Fund, a scheme floated by SREI Multiple Asset Investment Trust ("Resolution Applicant") is illegal and discriminatory and in violation of the Code and other applicable law.

Contentions

The contentions sated by the Appellant, that the earlier Plan that Resolution Applicant had offered an amount of Rs. 50 Crores to the Appellant which is now reduced to a substantial amount for no reason and grossly

discriminated the Financial Creditor. The offered amount to the Appellant in the Resolution Plan is only 3.9% of the total cash payment, despite the Appellant having 6.71% of the total outstanding admitted financial debt against the Corporate Debtor.

Thus, the Plan ex facie discriminatory among inter-se Financial Creditors and not treated the Financial Creditors equally, who are placed on the same footing. Further, categorization of the Financial Creditors as category 'A' and 'B' is not based on any material and such identification of 'A' and 'B' categories is invalid.

Further, the finding of the Adjudicating Authority wherein the Appellant is having security interest of lower in value in comparison to other Financial Creditor without determining the amount of the security interest of the Appellant is prima facie erroneous.

The Respondent, in reply to the contentions of the Appellant, stated that, the Resolution Plan was well within the procedure stipulated in the code, and the acceptance of Resolution Plan was purely within the domain of CoC which has approved the Resolution Plan with an overwhelming majority of 81.39% affirmative votes. Therefore, acceptance of the Plan is based on commercial wisdom, and the same cannot be set aside.

Further, Section 30(2) of the code, does not empower Resolution Professional to decide whether the Resolution Plan does or does not contravene the provision of law, it only means that he/she will have to give prima facie opinion to the CoC.

The said category was allocated by the Resolution Applicant due to lack of consensus amongst the members of the CoC. The Financial Creditor based on security in their favor were categorized in two categories i.e., Category 'A' and Category 'B'.

Further, The Appellant is a dissenting Creditor in the 20th Meeting of CoC and thereby the Appellant is not entitled to challenge the Resolution Plan approved by CoC, and the Appellant is not entitled to claim any relief.

Issues:

1. Whether the Appellant is entitled to claim relief under Section 60(5) when the Resolution Plan was approved?

2. Whether the Appellant being dissenting secured Creditor is competent to challenge approval of Resolution Plan?

3. Whether the alleged discrimination overrides the commercial wisdom of the CoC?

Held:

The Resolution Plan was approved by the CoC with a majority of 81.39 %, voting which is in compliance of Section 30(2) of code, and further, approved by the Adjudicating Authority, though the Appellant was a dissenting FC in the approval of the plan, and gave dissent during 20th Meeting of CoC, through letters, however, cannot be taken into consideration when the plan was approved by CoC and Adjudicating Authority, and any case, any error or illegality is found, it is the duty of the Adjudicating Authority to send back Resolution Plan for reconsideration by CoC.

But no illegality or contravention of provisions of IBC was found by Adjudicating Authority and as such approved the Resolution Plan.

Thus, the moment Resolution Plan is approved and attained finality, the same cannot be altered or modified or withdrawn.

As the Appellant is dissenting creditor Appellant is not competent to challenge the approved Resolution Plan and not entitled to receive payment of higher amount to it on the basis of security interest held by it over the Corporate Debtor, and hence the Resolution Plan is not discriminatory.

The Adjudicating Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom.

Thus, Adjudicating Authority does not have appropriate jurisdiction to question the CoC commercial wisdom. Further, all the compliances were carried out in the manner stipulated in the provisions of the code and hence, no such discrimination has been conferred over the Appellant.

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