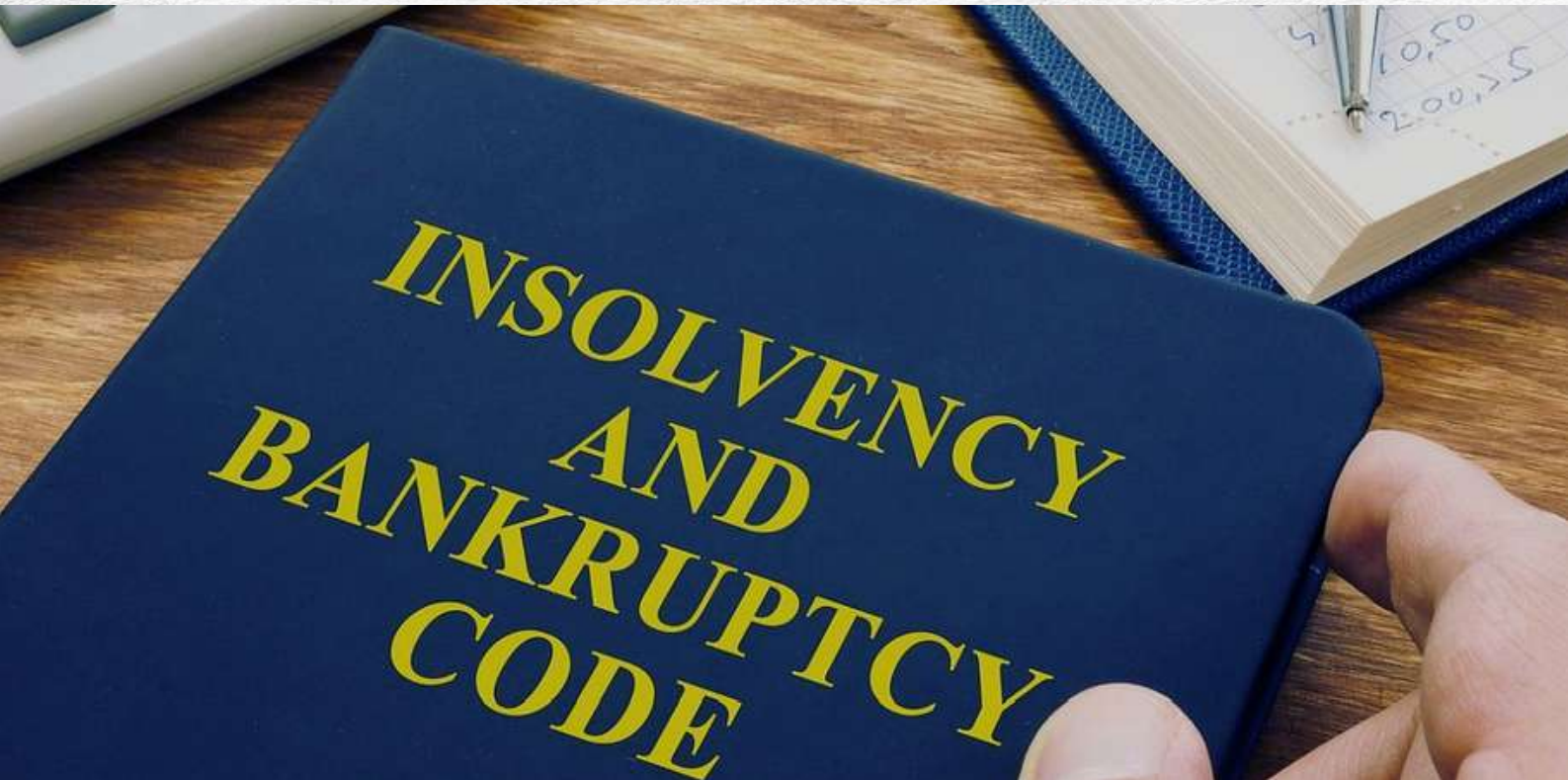


# RESOLUTION TIMES

Newsletter of a Premier Insolvency Professional Entity

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## LATEST JUDGEMENTS AND UPDATES

### SUPREME COURT JUDGEMENTS

#### 1. Ashok G. Rajani Vs. Beacon Trusteeship Ltd. & Ors

In the matter of **Ashok G. Rajani Vs. Beacon Trusteeship Ltd. & Ors.**, the NCLAT stayed the formation of CoC but declined to exercise its power under Rule 11 of the NCLAT Rules to take on record the settlement and disposition of the matter. Further, the NCLAT permitted the IRP to issue publication and also handover all assets and proceed with the CIRP even though the matter had been settled between the parties. Being dissatisfied by the order of the NCLAT, the Appellant has preferred the appeal before the Hon'ble Supreme Court.

After hearing the matter, the Hon'ble Supreme Court held the decision as follows:

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Section 12A of the IBC enables the NCLT to allow the withdrawal of an application admitted under Section 7 or Section 9 or Section 10, on an application made by the applicant with the approval of 90% voting shares of the Committee of Creditors in such a manner as may be specified. Further, section 12A of the IBC clearly permits withdrawal of an application under Section 7 of the IBC that has been admitted on an application made by the applicant. The question of approval of the CoC by the requisite percentage of votes can only arise after the CoC is constituted. Before the CoC is constituted, there is no bar to withdrawal by the applicant of an application admitted under Section 7 of the IBC.

As stated in the statement of objects and reasons, the object of the IBC is to consolidate and amend the laws relating to re-organisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance of interests of all stakeholders including alteration in the order of priority of payment of Government dues and to establish an IBBI and matters connected therewith or thereto. The statement says that an effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets, encourage entrepreneurship, improve business and facilitate more investments leading to higher economic growth and development.

A reading of the statement of objects and reasons with the statutory Rule 11 of the NCLT Rules enables the NCLT to pass orders for the ends of justice including order permitting an applicant for CIRP to withdraw its application and to enable a corporate body to carry on business with ease, free of any impediment. Considering the investments made by the Corporate Debtor and considering the number of people dependent on the Corporate Debtor for their survival and livelihood, there is no reason why the applicant for the CIRP, should not be allowed to withdraw its application once its disputes have been settled.

The settlement cannot be stifled before the constitution of the CoC in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process was not a reason to stifle the settlement.

The application for settlement under Section 12A of the IBC is presently pending before the NCLT and the NCLAT had stayed the  
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## INSOLVENCY TRIVIA

**1. When can a bank initiate a CIRP in relation to a corporate debtor?**

- (a) On determination of default by NCLT
- (b) Occurrence of default.
- (c) On net-worth of the debtor becoming negative
- (d) On the bank classified the account as NPAs.

**2. A debtor may make an application for a fresh start for discharge of....**

- (a) all debts
- (b) bankruptcy debts
- (c) qualifying debts
- (d) operational debts

**3) An appeal from an order of the Debt Recovery Tribunal may be filed before .....**

- (a) High Court having jurisdiction
- (b) Supreme Court
- (c) Debt Recovery Appellate Tribunal.
- (d) IBBI

**4) Who makes model bye-laws to be adopted by Insolvency Professional Agencies?**

- (a) NCLT
- (b) IBBI
- (c) MCA
- (d) Governing Board of the Insolvency Professional Agency

the constitution of the CoC. The order impugned was only an interim order which does not call for interference. In an appeal under Section 62 of the IBC, there was no question of law which requires determination by the Supreme Court. The NCLT was directed to take up the settlement application and decide the same in the light of the observations made above. The appeal was, accordingly, dismissed.

## 2. M/S Tech Sharp Engineers Pvt Ltd. V/s Sanghvi Movers Limited

The Supreme Court in the case of **M/S Tech Sharp Engineers Pvt Ltd. V/s Sanghvi Movers Limited** held that the relevant date is the date on which right to sue accrues i.e, the date of default.

In the present case, an agreement was executed between the appellant and respondent. The appellant rendered services from the respondent/Operational Creditor (OC). The respondent raised invoices on the appellant between January and March, 2013. A statutory notice was issued by the respondent in May, 2013 under the Companies Act, 1956. In May, 2014 respondent again issued statutory notice to the appellant. Later in December, 2015 the Respondent filed a Winding Up petition in the Madras High Court which was represented and returned to comply with the defects. On December 1, 2016 IBC came into force and thus in November, 2017 the respondent issued a demand notice for repayment of dues. In March, 2018 the respondent filed an application against the appellant under section 9 which was rejected by the NCLT stating the application to be barred by limitation. On appeal the order of NCLT was set aside and thus the present appeal.

The Supreme Court held that the date of enforcement of the IBC and/or the date on which an application could have first been filed under the IBC are not relevant in computation of limitation. It further added that it would be absurd to hold that the CIRP could be initiated by filing an application under Section 7 or Section 9 of the IBC, within three years from the date on which an application under those provisions of the IBC could have first been made before the NCLT even though the right to sue may have accrued decades ago.

In this case, the last acknowledgment was in 2013 and the Madras High Court neither suffered from any defect of jurisdiction to entertain the winding up application nor was unable to entertain the winding up application for any other cause of a like nature.

Hence the application was barred by limitation.

### ANSWER KEY FOR THE PREVIOUS QUIZ

1.(b) 30 days

2.( a) Form A

3.(c) 7 days

4.(a) Unregistered Partnership Firms

### 3. Maiterya Doshi v Anand Rathi Global Finance Lmt. &Anr.

Supreme Court in the case of **Maiterya Doshi v Anand Rathi Global Finance Ltd. &Anr**, held that approval of resolution plan in respect of one borrower cannot discharge co-borrower even if that co-borrower is pledger.

In the present case the Respondent 1/ Financial Creditor (FC) disbursed loan to M/s Premier (Premier) under three loan cum pledge agreements wherein the M/s Doshi pledged its shares in Premier to the FC. Premier defaulted in repayment of loan and therefore several notices were issued to Premier to repay the same. On 14 February, 2020, the FC called upon both the Premier and Doshi Holdings for repayment of loan. It is worth noting here that in the agreement two different transactions were contemplated, one of the loans and other of the pledge. On 19 February, 2020, the acknowledgement of debt was made by the Premier but it also intimated that it would be unable to pay the debt. On September 21, 2020 FC filed two applications under Section 7 of IBC, against both Premier and Doshi Holdings based on same loan documents. Both the applications were admitted by the NCLT. Appeal was filed by Appellant in NCLAT which upheld the order of NCLT and hence the present appeal.

The Appellate contended that since no loan amount was disbursed in favour of Doshi Holdings, application under Section 7 cannot be initiated against them as there is no element of time value for money. To support this argument, reliance was placed on Anuj Jain, IRP for Kaylee Infratech v/s Axis bank. Further, it was contended that under loan cum pledge agreement, the borrower was Premier and the pledger was Doshi Holdings and the documents

were executed by Appellant because he was authorized separately by both the parties to execute the documents.

It was also contended that creation of pledge of shares cannot amount to guarantee or indemnity under Section 5(8) of IBC.

The Respondent on the other hand contended that in loan cum pledge agreement both the parties have been identified as borrower and that Doshi Holdings acknowledged the receipt of monies and executed demand promissory note.

It was further contended that financial debt under IBC means disbursement against time value for money and not disbursement necessarily in favour of Corporate Debtor.

The Supreme Court in the present case upheld the finding of NCLAT that Doshi Holdings would be considered as borrowers as under loan cum pledge agreement.

As per the position of law, the pledger per se may not be considered as Corporate Debtor, however in the present case, Doshi Holdings was co-borrower in loan cum pledge agreement.

Further, if two bodies fall within the ambit of Corporate Debtor then separate proceedings under Section 7 of IBC can be filed against both the bodies, but the same amount cannot be realized from both the bodies. If part of the amount is paid by the Corporate Debtor then only the rest can be claimed by co-borrower.

## NCLAT ORDERS

### 1. CoC of Associated Décor Ltd. through Union Bank of India Vs. State of Karnataka

In the matter of **CoC of Associated Décor Ltd. through Union Bank of India Vs. State of Karnataka**, there were certain moot points for consideration before the NCLAT, Chennai which are as follows:

#### **a) Whether the claim of 1st Respondent's falls within the category of a financial debt or not?**

NCLAT noted that that there was no actual disbursement of money that was made to the Corporate Debtor. Further, there was no enhancement of money after a particular time period. While so, the contention of the Appellant that since there was no interest factor as per the definition of the financial debt, the claim of the 1st Respondent cannot be considered as financial debt. In view of the judgment of Orator Marketing Vs. Samtex Design Pvt. Ltd (2021), even if the money borrowed does not carry any interest and include interest free loan advanced to finance the business operations of a corporate body, would amount to financial debt within the meaning of Section 5(8) of the Code. Therefore, the stand of the Appellant that there was no interest component for the claim made by the 1st Respondent was negated.

NCLAT also observed that there was no time value of money involved in such an arrangement. In view of similar facts and by relying upon the decision of Hon'ble Supreme Court in Phoenix ARC Pvt. Ltd. Vs. Spade Financial Services Limited & Ors (2021), the NCLAT held that the claim of the 1st Respondent does not fall under the definition of

financial debt, accordingly, the observation made by the NCLT in this regard was answered as negative. Utmost the claim of the 1st Respondent being in respect of the liability of the Corporate Debtor to repay the Value Added Tax, which the Corporate Debtor has collected but not paid to the 1st Respondent, may be in the nature of operation debt as defined under Section 5(21) of the Code. Further, various decisions of NCLAT had held that the statutory dues such as income tax, sales tax, value added tax and various other taxes falls within the definition of operational debt.

#### **b) Whether the claim filed, is within the time as prescribed under the Code or not?**

NCLAT aptly noted that one of the most crucial principle is time is essence in any resolution process within which the process has to be completed in a time bound manner as contemplated under the Code. The Hon'ble Supreme Court in the landmark judgment of M/s Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [2017] held that "it can be seen that time is time of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation". Therefore, NCLAT held that the claim of the 1st Respondent herein was belated and cannot be considered and the finding of the NCLT in directing the RP to place the claim in Form-C before CoC per se was illegal and unsustainable.

#### **c) Whether the claim can be admitted by the RP suo-motu irrespective of non-filing of claim?**

The code prescribes the duties to be performed by the IRP and the RP, as per Section 18 and Section 25 of the Code, 2016. The IBBI CIRP Regulations 2016 prescribes the procedure to be followed. After receipt of t

he Claims, the IRP, shall verify the Claims in accordance with Regulation 13 and the IRP, maintain List of Creditors, containing Names of Creditors along with the Amount claimed by them, the amount of their Claims admitted and the Security Interest, if any, in respect of such Claims. There is no such provision that the IRP, shall admit the Claim without filing a Claim Form. Therefore, the NCLAT held that the IRP, suo-motu cannot admit the Claims without their being a Claim by the Claimants viz. Operational Creditors, Financial Creditors and Claims by other Creditors. Every Claim shall be submitted by the Claimant with proof and the issue is answered accordingly.

## 2. Small Industries Development Bank of India (SIDBI) Vs. Vivek Raheja, RP, M/s. Gupta Exim (India) Pvt. Ltd.

In the matter of **Small Industries Development Bank of India (SIDBI) Vs. Vivek Raheja, RP, M/s. Gupta Exim (India) Pvt. Ltd.**, the Hon'ble NCLAT, New Delhi discussed that Section 53(1)(b)(ii) used an expression "debts owed to a secured creditor" which is the basis for distribution in the order of priority as provided in Section 53(1)(ii). The debt owed to a secured creditor is a debt which is relatable to his claim as admitted in CIRP Process. The claim/debt of a secured financial creditor which is admitted in CIRP Process of a secured creditor is a fixed amount determined in CIRP process as reflected in Information Memorandum prepared by the RP.

The debt owed to a secured creditor is not the value of security of a secured creditor. The value of security of secured creditor is not the debt owed to a secured creditor in the CIRP. Section 53(1) does not contemplate distribution as per value of security of a secured creditor.

Submission of the Appellant that he is entitled to distribution of the proceeds of the plan value as per value of security possessed by him is not in accord with the legislative scheme as delineated in Section 53(1) of the Code. The CoC decided to distribute the amount as per amount accepted by the RP. The CoC decision was challenged before the NCLT who rejected the Application against which the Appeal was filed. The view of the NCLT for distribution of plan amount as per voting share was approved by the NCLAT.

Therefore, the NCLAT concluded based on the foregoing discussion that they did not find any error in the Order of NCLT rejecting the application filed by the Appellant. The decision of the Committee of Creditors and the Adjudicating Authority deciding to distribute the proceeds of the plan value as per voting share of the secured creditor in no manner contravenes the provisions of Section 30(2)(b) of the Code. In result, the Appeal was dismissed.

## 3. Punjab National Bank Vs. Supriyo Kumar Chaudhuri RP For JVL Agro Industries Ltd

In the matter of **Punjab National Bank Vs. Supriyo Kumar Chaudhuri RP For JVL Agro Industries Ltd.**, the issue arised whether the margin money deposited by way of an FDR against a Letter of Credit (LC) construes, a 'Security' as provided for under the Code and whether the margin money can be appropriated by the Bank during the period of Moratorium on the ground that it does not form a part of the asset of the Corporate Debtor. By the Impugned Order, the NCLT had directed the Appellant/Banks to reverse the transactions of appropriation of the margin money against the Letters of Credit (LC) and to credit the same amount of the margin money into the Current Account of the Corporate Debtor.

The LCs are independent contracts whereby the Appellant undertook to make payment to the beneficiary on demand. Margin money for the LC was a part payment provided by the Corporate Debtor to the Banks to honour the liability for procuring the material to be used for its activity as 'a going concern'. Margin money was not a security for LC but is a share of the contribution of the Corporate Debtor to procure any raw material.

Further, section 14 provides that sub-Section (1) of the IBC shall not apply to 'a surety in a contract of guarantee to a Corporate Debtor'. According to the Appellant that margin money is not a security and does not fall within a definition of 'Security Interest' as 'no 'Security Interest' was created by the 'Corporate Debtor' on the margin money. It was submitted by the Appellant that it is the usual practice of the issuing Bank to retain a cash margin ranging from 0% to 25% of the value of the obligation that the Bank assumed in the LC. The margin amount was adjusted in the amount of the bill and the issuing Bank pays it on behalf of the buyer. Upon receipt of the goods in the buyer's premises, issuing Bank applies on it the usual margin confirming to the terms of cash credit facility that the issuing banker may have extended to the buyer. The issuing Bank was bound to extend from time to time the validity of the period from the LC.

Margin money is construed as substratum of a Trust created to pay to the beneficiary to whom Bank Guarantee is given. Once any asset goes into trust by documentation for the benefit of beneficiary, the original owner will not have any right over the said asset unless it is free from the Trust.

The NCLAT observed that margin money has the character of Trust for the benefit of the beneficiary, it cannot be said to be an asset of the Corporate Debtor. These FDRs cannot be realized by the Corporate Debtor as and when it desires. The margin money deposited in the FDRs which the Corporate Debtor becomes entitled to only when the Margin Money is free from the obligations of the terms of the LC.

The NCLAT was of the considered view that margin money can in no manner be said to be a 'Security Interest' as defined under Section 3(31) of the IBC. Section 14(1)(c) prohibits any action to foreclose, recover or ensure any 'Security Interest' created by the Corporate Debtor in respect of its property. Therefore, it held that no 'Security Interest' was created by the Corporate Debtor with respect to the margin money that was deposited by the Corporate Debtor Company towards the opening of the LC in the Appellant Bank and the Banks having appropriated the money during the period of Moratorium was justified as the amount was not an asset of the Corporate Debtor. Therefore, a conjoint reading of Section 3(31) and Section 14 of the Code makes it abundantly clear that margin money was not included as a 'Security' and was not an asset of the Corporate Debtor.

#### 4. Enkay Brand Distribution Pvt. Ltd. Vs. Nike India Pvt. Ltd,

In the matter of **Enkay Brand Distribution Pvt. Ltd. Vs. Nike India Pvt. Ltd**, the Hon'ble NCLAT, Delhi observed that the application under Section 76 of the I&B Code was not listed and was laying in defect, as has been submitted by learned counsel for the Appellant, however, the order record the statement of counsel for the Corporate Debtor that they

withdraw the application. The NCLT heard the parties and had to decide its finality. The NCLAT held that the powers of the NCLT to take proceeding for prosecution were ample and at any stage, the NCLT can direct for the prosecution of either of the parties.

Further, the NCLAT stated that the filing of applications under Section 76 of I&B Code and Section 340 of CRPC were only for the purpose of delaying the proceedings as had been observed by the NCLT. The NCLT who was at the helm of the affairs and made observations after consideration and conducting the proceeding, due weightage had be given to such observation. When the NCLT observed that the application has been filed for delaying the proceedings, the NCLAT found no reason to take a different view. Therefore, it held that there was no merit in the Appeal and accordingly, it was dismissed.

## 5. Principal Commissioner of Customs Noida Customs Commissionerate Vs. Arvind Mittal IRP of Mkm Technologies

In the matter of **Principal Commissioner of Customs Noida Customs Commissionerate Vs. Arvind Mittal IRP of Mkm Technologies**, the Appeal was filed by Principal Commissioner of Customs Noida challenging the order passed by NCLT, Allahabad which was filed by Interim Resolution Professional with a prayer to direct Principal Commissioner of Customs Noida Customs Commissionerate to hand over the goods and assets owned by the Corporate Debtor and make receipts as on the date of Corporate Insolvency Resolution Process.

The NCLT allowed the Application and issued following directions:

*“15. As the ownership right of the goods in question is of the corporate debtor which is under CIRP. Therefore IRP has the right to take control and custody of the asset, though at present it lies in the possession of custom Department.*”

*16. In view of the above, this Adjudicating Authority hereby direct the Commissioner of Customs, Noida to hand over the goods owned by the Corporate Debtor lying with it as on the date of initiation of CIRP within 15 days from the date of order.”*

The NCLAT observed that the Appellant has fairly conceded the legal issues and issues raised in the Appeal are now covered by judgment of Hon’ble Supreme Court in the matter of “Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs” (2021) where the question of law was covered against the Appellant. In view of the law laid down by the Hon’ble Supreme Court, the NCLAT found no merit in the Appeal and any error in the findings of NCLT directing the Appellant to hand over the goods and assets owned by the Corporate Debtor and make receipts as on the date of Corporate Insolvency Resolution Process. Accordingly, the matter was dismissed.

## NCLT ORDERS

### 1. Dalip Narinder Gupta V/s M/s M.K Printech Ltd

The National Company Law Tribunal, Delhi Bench in the case of **Dalip Narinder Gupta V/s M/s M.K Printech Ltd.** allowed the application to initiate CIRP under Section 9 of IBC against the respondent i.e, Corporate Debtor (CD).



In the present case, the applicant/ Operational Creditor (OC) provided printing inks and adhesive to the CD. Invoices were generated in favour of the CD by the OC in the year 2017-18. CD defaulted in the payment of Rs. 76,83,064. The terms and conditions as mentioned in the invoice clearly stated that 18% interest would be charged if payment is delayed and hence, an interest amount of 25,39,575 was levied, making the total debt to sum up to 1,02,22,639. In lieu of the same default OC issued a demand notice under section 8 of the IBC and ultimately an application to initiate CIRP under Section 9 was filed by the OC.

The OC contended that the CD had not made the due payments and hence the demand notice was issued, the tracking report of the same was placed on record. Furthermore, on the directions of AA, the OC filed all the invoices and ran the account on record. The CD on the other hand contended that the interest claimed was never agreed on by the parties. That the payment was disputed. Furthermore, CD contended that all the payments were made on time and no default has been made. It was thus submitted by the CD that the application was filed by the OC for the purpose of recovery and not seeking resolution. In the rejoinder filed by the OC all the arguments of CD were rebutted.

The AA in the present case held that the CD never intimated the OC of the dispute in payment and no notice of dispute was sent by CD to OC. Further, there was no pre-existing dispute regarding the quality of goods and nothing substantial was presented by the CD. Moreover, the AA held that the invoices were not fabricated and the E Way Bills were presented by the OC for the proof of the same. Hence the application under Section 9 of the IBC was accepted and CIRP was initiated.

## 2. UCO Bank V/s GR Multiflex Packaging Pvt. Ltd

In the present case the Financial Creditor (FC) rendered financial services to the Corporate Debtor (CD) initially in the 2005 and later the cash credit limit was increased and the Term loan repayment was rescheduled. The CD defaulted to pay the EMI of the Working Capital Term Loan and the same was notified to them by the FC in the year 2010. Later on the request of CD the cash credit limit was again increased. Thereafter in the year 2017, an agreement was executed between FC and CD hypothecation charge was created for various credit facilities availed by FC.

The FC contended that the CD on various instances defaulted in the repayment of loan. Furthermore, a notice under Section 13(2) of SARFAESI Act was issued to the CD. An appeal was filed by CD in DRT, Kolkata Bench was still pending. The CD on the other hand contended that since the FC filed proceedings under SARFAESI Act, they cannot be allowed to file multiple proceedings by filing an application under Section 7 of IBC. Furthermore, the FC sold the mortgage property and the amount procured in the sale has not been adjusted by the FC.

The AA accepted the application filed under Section 7 of the IBC by the FC against the CD. It was held that the CD failed to adhere with the terms and conditions of restructure cum sanctioned letter. The CD was declared NPA on 28th February, 2018 as per the record but the OTS of the loan dated November 17, 2020 is adequate enough to attract section 18 of limitation act and thus the acknowledgement of debt condoned the delay.

Hence, the application filed by FC was accepted.

### 3. Mannil Sudhir Nair & Ors. v/s Kashish Developers Ltd.

The NCLT, Kolkata Bench, in the case of **Mannil Sudhir Nair & Ors. v/s Kashish Developers Ltd** held that, a decree holder can file a petition under section 7 of the IBC hence the present petition is maintainable.

The main issue that arose in this case was whether Petitioners come under the purview of Financial Creditor (FC). The Petitioner contended that the decree holder would come under the ambit of FC by virtue of Section 3(10) of IBC which defines creditors and thus the decree holder has the right to initiate CIRP against CD. The petitioner relied on the case of Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddt And Anr.

In the present case, the petitioners purchased residential flats in the project of Corporate Debtor (CD) and paid advance consideration in lieu of which the CD promised to deliver the flats by promised date. The CD failed to adhere to his promise as the project could not be completed on time. The petitioner approached Haryana Real Estate Regulatory Authority, Gurugram (HRERA) wherein it held that in case the CD did not handover the possession by September 2019, than CD has to repay the whole principal amount with 10.7% interest rate. Neither the possession of flats were given nor the payment of the amount as ordered by HRER. The petitioners thus filed an application under Section 7 of the IBC as decree holders.

The CD on the other hand contended that homebuyer under section 7 of IBC has to be filed jointly by not less than 10% of the total allottees or not less than 100 allottees of the same project. Furthermore, it was contended that the petitioners are creditors but not FC and hence cannot initiate CIRP.

The reliance was Sushil Ansal v. Ashok Tripathi and Ors wherein the Hon'ble NCLAT had held that a decree holder will not fall into the definition of Financial Creditor. It was further contended that the IBC is not a recovery forum but is for the revival of the CD.

The NCLT taking into consideration the Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddt And Anr.& Kotak Mahindra Bank Limited v. A. Balakrishnan and Ors held that a liability in respect of claims which arise out of Recovery Certificate would come under the ambit of financial debt under Section 5(8) of IBC. Thus, a decree holder can file a petition under section 7 of the IBC hence the present petition is maintainable.

### 4. Majestic Commercial Private Limited V/s Kharikatia Tea & Industries Ltd

The NCLT Kolkata Bench in the matter of **Majestic Commercial Private Limited V/s Kharikatia Tea & Industries Limited** allowed the application for liquidation of the Respondent i.e, the Corporate Debtor (CD).

The Financial Creditor (FC) filed an application against CD under Section 7 and CIRP was initiated. The Interim Resolution Professional (IRP) was appointed who was later confirmed as Resolution Professional (RP) by the COC in the 1st meeting. Public Announcement was made by the wherein the claims of the creditors were invited, in response to which only one claim was received who is the FC. In the 2nd COC meeting, 100% voting shares decided to liquidate the CD since the company had no assets except the investment in shares of the unlisted company.

The CoC decided to appoint RP as liquidator. The CIRP period ended on 29/05/2022. The RP conducted two CoC meetings and submitted two progress reports to the AA.

The AA referred to Section 33(1)(a) and 33(2) of the IBC which mandates the AA to pass an order of liquidation in case CoC votes in favour of the same by not less than 66% voting shares and no resolution plan has been received by the RP. Thus, the AA ordered the liquidation of the CD. AA further ordered the RP to be appointed as the liquidator and that he must initiate the process as envisaged under Chapter III of the IBC and Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. It was further ordered that the powers of Board of Director and key managerial persons cease to exist and the liquidation order will be deemed to be a notice of discharge to the officers and employees. Moreover, subject to Section 52 of the IBC, no suit or other legal proceeding shall be instituted by or against the CD save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the CD with prior approval of the AA.

## 5. Bank of Baroda V/s M/s Aryavrat Trading Pvt. Ltd

The NCLT Kolkata Bench in the matter of **Bank of Baroda V/s M/s Aryavrat Trading Pvt. Ltd.** allowed the application for liquidation of the Respondent i.e, the Corporate Debtor (CD).

The Financial Creditor (FC) filed an application against CD under Section 7 and CIRP was initiated. The Interim Resolution Professional (IRP) was appointed who was later replaced by Rachna Jhunjunwala as Resolution Professional (RP) by the COC in the 1st meeting. Public Announcement was

made by the IRP wherein the claims of the creditors were invited. Further, Public Announcement in Form G was published inviting Expression of Interest (EoI), however, no EoI was received. In the 2nd COC meeting, 100% voting shares decided to liquidate the CD since the company had no asset except one flat and there was no response from any prospective resolution applicants in response to EoI published. In the 3rd CoC meeting the members of CoC were convinced that the RP should file an application for liquidation of CD and should also search for options of selling the CD as a going concern. The CoC decided to appoint RP as liquidator. The CIRP period will end on 27/09/2022.

The AA referred to Section 33(1)(a) and 33(2) of the IBC which mandates the AA to pass an order of liquidation in case CoC votes in favour of the same by not less than 66% voting shares and no resolution plan has been received by the RP.

Thus, the AA ordered the liquidation of the CD. AA further ordered the RP to be appointed as the liquidator and that he must initiate the process as envisaged under Chapter III of the IBC and Insolvency & Bankruptcy (Liquidation Process) Regulations, 2016. It was further ordered that the powers of Board of Director and key managerial persons cease to exist and the liquidation order will be deemed to be a notice of discharge to the officers and employees.

Moreover, subject to Section 52 of the IBC, no suit or other legal proceeding shall be instituted by or against the CD save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the CD with prior approval of the AA.

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