AVM RESOLUTION PROFESSIONALS

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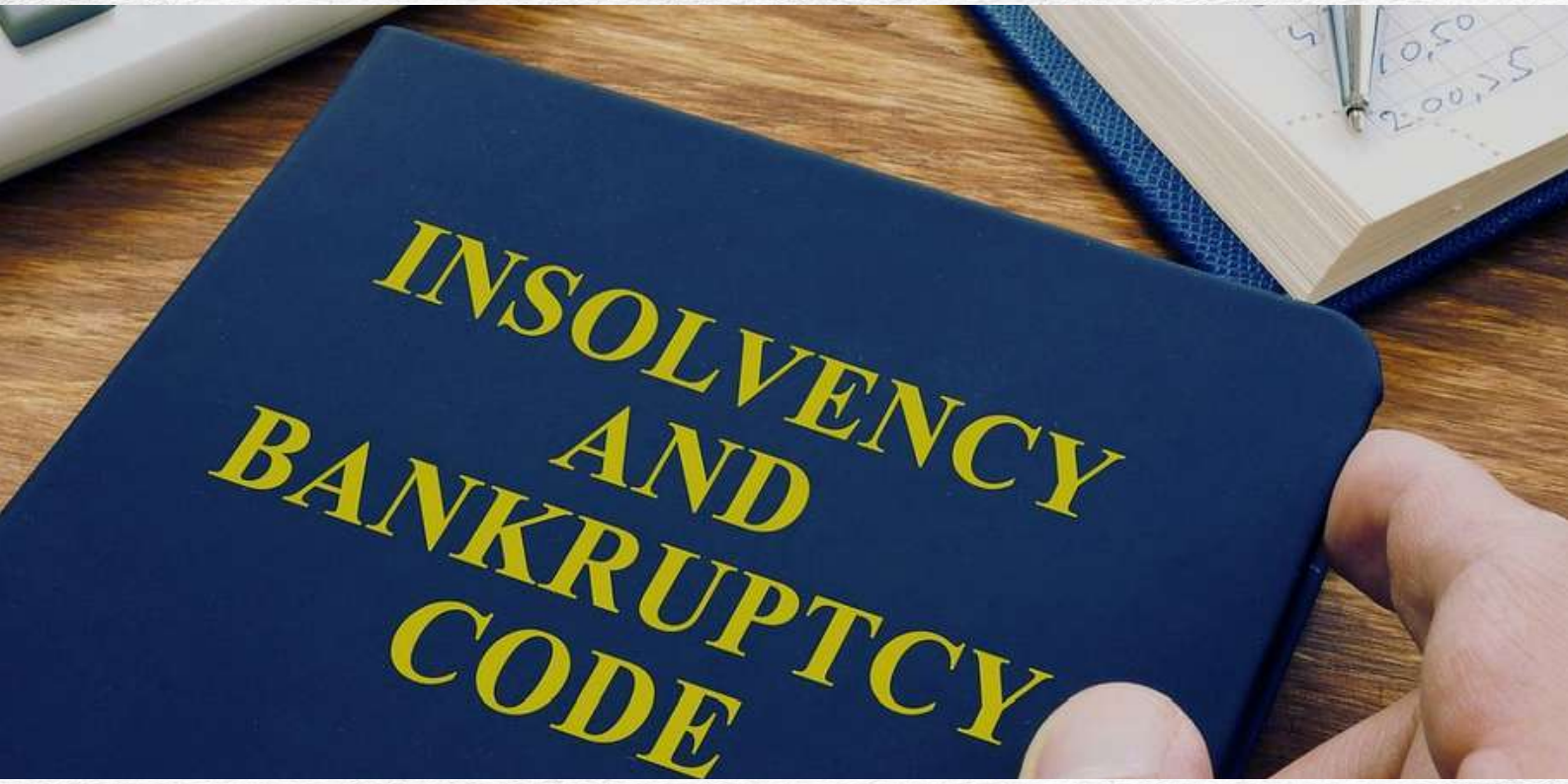

LATEST JUDGEMENTS AND UPDATES

NCLT JUDGEMENTS

1.PNB Housing Finance Ltd. v. Mr. Mohit Arora

Background and Contentions

PNB Housing Finance Ltd. had filed the application under Section 95 IBC, 2016, seeking initiation of Insolvency Resolution Process of Mohit Arora (PG), acting as the personal guarantor of M/s Supertech Limited (Corporate Debtor). The FC sanctioned loan facilities of the total Rs.275, in favour of Supertech Limited.

Further, a Loan agreement was executed between Corporate Debtor and co-borrower, namely, Sarv Realtors Pvt. Ltd. and ASP Sarin Realty Pvt. Ltd. and Mr. Mohit Arora along with RK Arora and Sangita Arora, has provided their personal guarantees in favour of the creditor to secure the credit facilities of the corporate debtor.

WHAT'S ~~INSIDE THIS~~ ISSUE:

The Corporate debtor, had defaulted in the payment of the monthly instalments due and payable to the creditor, along with a demand notice being served, under SARFAESI Act, 2002 to corporate debtor and personal guarantors, demanding amount to Rs. 279 crore plus interest.

The RP was appointed by Adjudicating Authority, and meeting with the creditors, and also a meeting with the PG for taking information and records. Wherein it was confirmed that no payment was made in lieu of demand notice served. Thereafter the RP summarised the details in support of initiating the Insolvency proceeding against the PG.

The PG filed the reply to the summary wherein the appointment of RP was challenged to not according to the provisions envisaged in the law, and the name was not referred by IBBI and an appeal was filed basis this to appellate tribunal, wherein it contented that an application was already filed by IFCI Limited against the Mr. Mohit Arora as PG to CD, on similar grounds and simultaneously interim moratorium commenced.

In response to the contentions of the PG, it was stated the ICFI Application was registered by NCLT post the registration and filing of PNB application. Thus, interim moratorium is commenced when it is filed.

Issues

1. Appointment of RP was not done in appropriate manner following the due process of law, since the name was not referred IBBI for confirmation and the appointment was done on merely relying on the declaration of the non-pendency of any disciplinary proceedings?
2. Filing of the application by PG maintainable or not?
3. Whether default has been done by the PG and initiation is maintainable or not?

Observation

The Tribunal observed that, that IBBI gave access to NCLT benches to its live databases of IPs available with all information being present. Since the adjudicating authority appointed basis the database, thus appointment of the RP has been according to the provisions of the code. For the second issue, there has been complete concealment of the facts by the PG regarding filing of Section 95 matter parallelly in another Bench of the tribunal which led to appointment of RP and subsequently filing of the application.

INSOLVENCY TRIVIA

1. RP has to file applications to AA for appropriate relief ___

(a) T+130
(b) T+135
(c) T+115
(d) T+75

2. Form G will be published by the RP within _____

(a) T+30
(b) T+ 60
(c) T+ 75
(d) T+ 90

3) RP shall submit the Information Memorandum to CoC within ____

(a) T+ 44
(b) T+54
(c) T+95
(d) T+75

4) The moratorium period under the Fresh Start Order process lasts for ____ days

(a) 45
(b) 90
(c) 180
(d) 277

For third issues it has been observed that sufficient records have been produced by the RP depicting guarantee been given to CD and default has been committed by the PG.

Held:

Initiation of Insolvency Resolution process was allowed and the RP was directed to act according to the Section 100(2)of IBC, 2016.

2. C.P. Ispat Pvt. Ltd. Vs. Maan Steel & Power Ltd. & Ors. (NCLT)

Background:

The Applicant, the Successful Resolution Applicant whose Resolution Plan with regard to Corporate Debtor, Divya Jyoti Sponge Iron Private Limited, was approved by Committee of Creditors as well as by order of Adjudicating Authority. After the approval of the Plan, Resolution Applicant implemented the Plan. However, three Applicants, who were Operational Creditors, filed Interlocutory Applications claiming that the distribution to them, under the Plan, was not in accordance with the Resolution Plan.

Further, in the applications Adjudicating Authority directed the Resolution Applicant to make the payment as per Resolution Plan submitted i.e., 47.49% of the total amount i.e., Rs. 3,15,86,607/- within 10 days. The Resolution Applicant since submitted before Adjudicating Authority that they are willing to make payment hence, they were relieved from Section 74(3) of the Code.

Contentions:

The applicants contended that the Resolution Plan itself contemplated that there shall be hair-cut of 96.83% to the Operational Creditors. Hence, by taking hair-cut of 96.83%, the amount was distributed to the three Applicants. The Respondents contended that the Resolution Professional has admitted the claims of all the three Operational Creditors to the extent of Rs. 3,15,86,607/-. Hence the amount of Rs. 1.5 Crores which was allocated to the Operational Creditors, were required to be distributed to all the Operational Creditors.

Further, in Applicants in the rejoinder, Rs. 1.5 Crores was to be distributed with hair-cut of 96.83%, the balance amount has to be taken care of any future claims of the Operational Creditors out of the trade payable amount of Rs. 46.43 Crores and to cater any future eventuality where further Operational Creditors.

ANSWER KEY FOR THE PREVIOUS QUIZ

1.(b) Occurrence of default.

2. (c) qualifying debts

3.(c) Debt Recovery Appellate Tribunal.

4.(b) IBBI

Held:

Resolution Plan has dealt only the claims which were before the Resolution Professional and Resolution Plan has not dealt with any future claim of the Operational Creditors which may come subsequently after the approval of Plan. error in the order of the Adjudicating Authority directing payment by Appellant by taking hair-cut of 52.51%

3. CHD Developers Ltd. Through Gaurav Mittal (MD)

The question which arises for consideration is as to what is the role of the Adjudicating Authority when there is a Section 7 IBC petition filed and pending long before the present PPIRP application is filed.

Basis the objects and reasons of the amendment to the IBC which came into effect on 04.04.2021, the Parliament in its wisdom after having enacted the IBC Code, 2016 thought it fit to have an alternative mechanism by bringing in the concept of pre-package by way of an Amendment on 04.04.2021.

On reading of the objects and reasons, one factor is clearly discernible that the Government wanted a hybrid method of Insolvency Resolution Process which includes creditors in control (Section 7, 9 or 10) as well as debtors in control (PPIRP). The Government opted for the hybrid method by bringing this Ordinance.

Thus, a confusing situation of FC in control versus the CD in control raised wherein order to ensure that the Adjudicating Authority does not face a logjam and to resolve the overlap, Section 11A was brought into force laying down the parameters as to how Adjudicating Authority will deal with the types of cases. Section 11A(1) 1) deal with the case where an application filed under Section 54C is pending, Adjudicating Authority shall pass the order to admit or reject the application.

Firstly Section 11A(2) explains that in a situation where a Section 7, 9 or 10 application is filed and pending in respect of CD then an application under Section 54C is filed within 14 days of the filing of said petition then the Adjudicating Authority will first dispose of the application filed under Section 54C and not the application filed under Section 7, 9 or 10 of IBC. Here again Section 54C takes precedence.

Secondly, Section 11A (3) if 54C application of PPIRP is filed 14 days after application under Section 7, 9 or 10 of IBC is filed against the same CD, the Adjudicating Authority has been mandated to dispose-off the application under Section 7, 9 or 10 of IBC at the first instance, making it clear that Section 7, 9 or 10 will take precedence over Section 54C.

Combined reading makes it clear that this time line for taking up petitions as mentioned therein comes into effect only from 04.04.2021, the date of Ordinance.

It is to be noted that all pending Section 7, 9 or 10 petitions as on the date of commencement of Amendment dated 04.04.2021 will have no application. The legislature has been of the fact that timeline has granted under Chapter III-A and therefore if that does not work then CIRP can be initiated or pursued. This can only relate to situation under Section 11A (1), (2) & (3).

On the contrary, in Section 11A (4) it is clearly mentioned that the provisions of Section 11A will not apply where an application under Section 7, 9 or 10 is filed and pending on the date of commencement of the (Amendment) Ordinance, 2021 dated 04.04.2021. From this it clear that the procedure prescribed under Section 11A (1), (2) & (3) of Chapter III-A will not hold the Adjudicating Authority from considering an application already filed and pending under Section 7, 9, 10 of IBC.

4. Manoj Jayswal Member of the Suspended Board of Directors of Jas Infrastructure and Power Ltd. (in Liquidation) Vs. Punjab National Bank

Background:

The Corporate Debtor, in order to set up a 1320 MW (2x660 MW) supercritical Coal based Thermal Power Project at Siriya Village, Baunsi Block of Banka District, Bihar approached Punjab National Bank (Respondent No. 1) for grant of a term loan facility with the sanction limit of Rs. 500 Crores. The loan agreement dated 24.03.2012 was executed as per which a consortium of eleven banks, led by Axis Bank, sanctioned term loans aggregating to Rs. 5920 Crores to part finance the said project of Respondent No. 2 with total cost of Rs. 7400 Crores to be funded by debt (Rs. 5920 Crores) and equity (Rs. 1480 Crores) with a DER of 80:20.

Contentions

The Appellant contended that the application filed under Section 7 of the Code was barred by limitation because the limitation was to be counted from the date when the account was declared as NPA and the application under Section 7 of the Code was filed was beyond the period of three years.

Further the Adjudicating Authority has committed a patent error in extending the period of limitation w.e.f. 31.03.2016 on the ground that the outstanding amount has been reflected in the balance sheet of the Appellant. The Respondent contended that, the outstanding amount has been shown in the balance sheet of the Appellant, the limitation would start from the said date on the premise that the debt has been acknowledged by the Appellant and in this regard reliance.

Held:

It is held that the disclosure by the assessee company in its balance sheet as on 31st March, 2002 of the accounts of the sundry creditors' amounts to an acknowledgement of the debts in their favour for the purposes of Section 18 of the Limitation Act. The assessee's liability to the creditors, thus, subsisted and did not cease nor was it remitted by the creditors. The liability was enforceable in a court of law.

5. Haryana through Excise and Taxation v. Mr. Anup Sood Resolution Profesional (for M/s Anand Tex India Pvt. Ltd)

Background:

Application has been filed by Excise and Taxation Officer, Panipat Haryana, under Section 60(5)(b) of the IBC, 2016 read with Rule 11 of National Company Law Tribunal, 2016, seeking acceptance of claim regarding statutory dues of the department by the Resolution Professional. Petition was filed under Section 7 of the "Code" for initiating the Corporate Insolvency Resolution Process. The CIRP of the Corporate debtor was conducted by the Resolution Professional. During the

12th meeting of the CoC, the sole financial creditor, i.e, Bank of India, being the only member of CoC, had approved the resolution plan with 100% voting share.

Contentions

The corporate debtor being the assessee of the applicant department under the Haryana Value Added Tax Act, 2003 and the case of the corporate debtor for the assessment year 2017-18 (1st quarter 2017-18) was taken into scrutiny under Rule 27 of Haryana Value Added Tax Act, 2003. The statutory notice in Form-N-2 was issued and served upon the corporate debtor on 07.11.2019 under Section 15(2) of the HVAT, Act 2003 and the case was taken up for disposal on 28.03.2021. The applicant has raised the demand of Rs.34,61,630.

The applicant has served that assessment order along with notice of demand upon the Thereafter, the applicant took the necessary steps and filed the claim as performa-B under Regulation 7 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016, on with the Resolution Professional along with supporting documents.

The respondent in response to the above claim, the informed the applicant that the resolution plan has been approved. Therefore, the Respondent is unable to accept the claim of the applicant department.

Further, the claim was filed by the applicant after a delay of 464 days from the end date of submission of claim. The claim was filed subsequent to the approval of the plan by CoC, and hence on the grounds of delay, the claim of the applicant was rejected by the respondent.

Held:

The claim for payment of statutory dues was filed before the Resolution Professional after the plan was approved by the CoC. Further, taking the reference of the recent case, State Tax Officer (1) v. Rainbow Papers Limited, held that the definition of a secured creditor in the IBC does not exclude any Government or Governmental Authority. However, in this case, it is nowhere pleaded or argued that the claimant has any secured interest. Thus, the claim under dispute is that of an operational creditor, not that of a secured creditor as defined under section 3(30) read with section 3(31) of the IBC, 2016.

Thus, applicant has not shown due diligence in submitting the claim before the Respondent, and hence claim cannot be accepted.

6. Deepak Vegpro Pvt. Ltd. Vs. Shree Hari Agro Industries Ltd.

Background:

Deepak Vegpro Pvt. Ltd., as financial creditor, filed an application under section 7 of the IBC against the corporate debtor Shree Hari Agro Industries Ltd., claiming that a debt and interest thereon amounting to total of Rs.412.52 crores is due and payable to it by the corporate debtor.

The Appellant obtained a term loan of Rs.4,50,00,000 from the Industrial Development Bank of India (IDBI) which was to be repaid in 20 quarterly instalments with interest @ 21% p.a. and the said loan agreement and deed of hypothecation of immovable property and mortgage of movable assets.

As per terms of the said loan agreement, the first instalment fell due and payable on 1.4.1998, and when the Respondent defaulted

in repayment of the debt, IDBI issued a formal notice to recall the entire loan amount on 26.4.2000 and initiated proceedings against the Respondent on 22.9.2000 for recovery of the outstanding debt before the Debt Recovery Tribunal, Jaipur. The Appellant has further stated that the Respondent made a reference to the Board for Industrial and Financial Reconstruction (in short 'BIFR') and it was declared a Sick Industrial Unit on 13.6.2001.

Further, during the pendency of proceedings before BIFR, the IDBI assigned the said loan to Stressed Asset Stabilisation Fund (SASF), which in turn assigned the entire loan with interest and security interests in favour of Appellant, whereby the Appellant stepped into the shoes of SASF and became a secured financial creditor of the Respondent.

Contention:

The Appellant contented that the said Assignment Deed was signed after the Respondent gave no objection dated 9.1.2007 for assignment of the said loan in favour of the Appellant, which was done for consideration of Rs. 2,50,00,000/- and consequently the security charge relating to the loan was modified and registered in favour of the Appellant with the Registrar of Companies, who issued the Certificate of Registration of Charge and the Appellant became the first charge holder of the related movable and immovable assets of the Respondent. T

he Appellant has also stated that a fresh unsecured loan amount to Rs.2,85,00,000/- was disbursed by the Appellant to the Respondent.

Further it was contended unilaterally and without the consent of the Appellant, falsely claimed that the Applicant agreed to waive the entire interest and 70% of the principal amount of the secured loan and 80% of the principal amount of the unsecured loan while submitting the Draft Rehabilitation Scheme, which was not approved by the BIFR, and BIFR's decision was upheld in appeal by the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and the Hon'ble Delhi High Court.

Respondent has argued that after the default committed by the corporate debtor in repayment of IDBI loan, the IDBI obtained right to recover from the BIFR. He has further argued that in the year 2004 and later, the Appellant started action for taking over the corporate debtor, and contributed Rs.2.50 crores to the corporate debtor.

Further it has been argued that the amount of secured debt shown in the balance sheets should be read with the notes in the balance sheets, and in particular the note in the balance sheet for the FY 2008-09 shows that no repayment schedule is attached to the said loan. He has also stated that there is no interest amount shown as liability in the balance sheet which also goes to show that the amount of Rs. 1.35 crores is not a loan but a financial contribution of Deepak Vegpro Pvt. Ltd. to the corpus of the corporate debtor and not a loan and it has been placed in the section of secured credit in the balance sheets for ease of accounting.

Further, the original loan of Rs.4.5 crores given by IDBI was reduced to Rs. 1.35 crores from FY 2008-09 onwards, which is the figure shown in the balance sheet of the corporate

debtor and it has not been explained by the Appellant as to how the original amount got reduced to Rs. 1.35 crores. the Appellant nor demanded by him at any time after the loan was assigned to the Appellant and therefore, in the absence of any repayment schedule after assignment for the alleged loan as mentioned in the notes included in the balance sheet of FY 2008-09, there is no default regarding the same.

Held:

IDBI claimed its debt of Rs. 4.5 crores given in 1998 with interest @ 21% p.a., in a recovery suit for such loan which was withdrawn on 16.10.2007. Earlier, a notice for the recovery of IDBI loan was given on 26.4.2000, which was after default in repayment. Thereafter this loan was assigned to SASF and subsequently to Deepak Vegpro Pvt. Ltd. through Assignment Agreement dated 17.1.2007. From the documents submitted in the appeal by both the parties, it is quite clear that IDBI had lost interest in the recovery of the said loan and the assignee SASF and thereafter Deepak Vegpro Pvt. Ltd., also did not make any effort to recover the amount nor made any demand for repayment/recovery of the pending amount to the corporate debtor. The amount of Rs. 412.52 crores, which is claimed in default in the Part IV of section 7 application, is hugely different from either the original loan of Rs. 4.50 crores or the amount of Rs. 1.35 crores appearing in the balance sheets from FY 2008-09 till FY 2017-18. We thus find that the acknowledgements in the balance sheets which widely differ from the claim made in section 7 application does not provide any extension of limitation to the debt claimed in section 7 application. Therefore, these acknowledgments through the balance sheets, as claimed by the Appellant, do not pertain to the loan amount claimed by the Appellant. Therefore, the said loan or its part thereof is not proven to be a financial debt, and the section 7 application is also barred by limitation since the acknowledgements do not provide for unequivocal and unambiguous acknowledgement of the alleged debt as claimed in the section 7 application

7. RMY Industries LLP Vs. Apple Industries Pvt. Ltd. Through its Official Liquidator

Background:

Appellant was the Successful Auction Purchaser in the liquidation proceeding where assets were sold as going concern on ‘as is where is’ basis. The Appellant in the application has claimed about 30 reliefs and concessions. The Adjudicating Authority has rejected application observing that no relief and concession can be granted.

Contentions:

It has been contended that the liquidation sale as going concern Liquidator has filed application for certain relief which was related to the past dues and prayer for extinguishment of past/ remaining unpaid outstanding liabilities, which was permitted.

Held:

The Adjudicating Authority is empowered to consider any application filed, by the Liquidator or Successful Auction Purchaser, which may arise with regard to terms and conditions of auction sale or sale as going concern as per the Liquidation Regulation. Thus, there is a liberty to the Appellant to file an appropriate application before the Adjudicating Authority, which may arise from the terms and conditions of the auction sale or sale as going concern, which may be considered by the Adjudicating Authority.

NCLAT JUDGEMENTS

1.Sreedhar Tripathy Vs. Gujarat State Financial Corporation & Ors

Background:

Section 10 Application was filed by the Appellant Corporate Debtor, accordingly the CoC was formed, basis the code, wherein initially the committee decided to withdraw under Section 12A IBC, 2016, but since the CIRP has been initiated by the corporate debtor itself. Therefore, CoC decided to liquidate the Corporate Debtor. Further, filed before the Adjudicating Authority and approved by the same. The Appellant filed an appeal before NCLAT.

Contentions:

The Appellant contended that the decision made by CoC is arbitrary in nature, and CoC has not used its commercial wisdom while deciding. The Respondents on the other side contended that the CoC under Section 33(2) IBC, 2016 has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan.

The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC.

Further, the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs, thus liquidation is the best option to be availed.

Held:

CoC is empowered to take decision under the code and in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, does not attract any interference. Appeal Dismissed.

However, it depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I&B Code or not, and hence decision can be under the ambit of judicial preview.

2. XYno Capital Services Pvt. Ltd. Vs. Dilip Buildcon Ltd

Background:

Appeal has been filed against the order dated 15.07.2022 by which order the Adjudicating Authority has rejected Section 9 application filed by the Appellant. The Appellant was engaged in the business of providing consultancy service advising its clients on bidding in various Coal Mine Developer and Operator Tenders. A letter dated 19.03.2019 was issued to the Corporate Debtor by the Operational Creditor demanding payment of Rs.1,24,69,143/-. The said letter was replied by the Corporate Debtor on 18.04.2019 denying the claim of the Appellant and raising grounds regarding deficiency in the service from Operational Creditor's side.

Subsequently, Section 8 notice was issued and thereafter Section 9 application has been filed, but was rejected by the impugned order on the ground that there were preexisting disputes between the parties. The Adjudicating Authority has relied on letter dated 18.04.2019 for holding that there is pre-existing dispute.

Contentions:

The Appellant contended that there were no grounds on basis of which it can be held that there was pre-existing dispute. The respondents in its reply presented the grounds wherein the reply to the demand letter clearly raised grounds regarding deficiency in service and the supply was on milestone basis and was never supplied and thus constituted deficiency in service.

Further, the Corporate Debtor has contended that all the work contracts with the Operational Creditor are terminated.

Held:

The Reply letter, raises sufficient grounds for pre-existing dispute and the Adjudicating Authority did not commit any error in rejecting the Section 9 application relying on the said letter.

Thus, the letter which was issued prior to the Section 8 notice was sufficient to indicate that there was a pre-existing dispute. Appeal dismissed.

3. Mrs. Renuka Devi Rangaswamy, RP of M/s. Regen Infrastructure and Services Pvt. Ltd. Vs. M/s. Regen Powertech Pvt. Ltd.

Background:

2.03.36 hectares of land in the registration District of Morbi in Gujarat State were purchased with Regan Infrastructure and Service Pvt. Ltd. (RISPL), at Rs.58,25,050/- for Regan Powertech Pvt. Ltd. (RPPL) and the said amount has been transferred from the RISPL's current account in favour of the seller farmer.

Contentions:

The Appellant contended that, that the Adjudicating Authority had failed to appreciate that there is no 'Moratorium', as per Section 14 of the Insolvency & Bankruptcy Code, 2016, against the RPPL.

Further, Adjudicating Authority has not taken into consideration the 'Documents', i.e., audited financial statement for the year ended 31.03.2020; fixed assets of the corporate debtor; bank statement of the corporate debtor; sale deed; and 'Record of Rights', in addition to Forensic Report and Transaction audit report. Thus, had committed an error in placing 'reliance' heavily on the 'Forensic' and 'Audit Report', without considering the above-mentioned documents.

Since the 'Sale Consideration' for the purchase of the 'Land' was paid by the RISPL, but the 'Land' was registered in the name of the RPPL, and further that the Respondents had indulged in a 'Fraudulent Transactions' with an intent to 'Defraud' the creditors of the corporate debtor.

Further, 'no Documents' were available in the 'Records' of the corporate debtor and that the 'Assets were to be traced. No details were given to them to procure the 'Asset' details of the `Corporate Debtor'. Further, RPPL is a 'Related Party' of the corporate debtor, by means of being the 'Holding Company' of the corporate debtor, and having a `Common Directorship'.

Further, the said transactions were put forth before CoC, however, no clarifications or explanations were provided by respondents. The Forensic and Transactions Audit Report said 'Transactions' was pointing out that the 'Books of Accounts' are not reliable and that

no ‘supporting Documents’ were found, in respect of the entries in SAP, recommending ‘legal action’ against the Respondents. Later, in the `Seventh’ and the `Eighth Committee of Creditors Meetings’, that took place on 26.04.2021 and 06.05.2021, respectively, the matter was deliberated upon and based on the advice of the ‘Committee of Creditors’, the Appellant was instructed to file ‘Petitions’, in recovering the said ‘Land’, etc.

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Further, the conduct of the ‘Suspended Directors’ of the ‘Corporate Debtor’ from the CIRP commencement date had not furnished the documents, as asked by the Appellant, and the silence of the Respondents affirm their role, to defraud the Creditors. The Respondents in reply to the contentions said that, depending upon the business requirements and various rules and regulations prevailing at that point of time, in numerous stages, the lands were required either by the Appellant Company / Subsidiary Company, because each state has different ‘Rules’.

Thus, RPPL, was the ‘Prime Holding Company’, many times for the ‘most Long-Term Assets’.

Further, there is a mandatory condition of the `State of Gujarat’ that the land should be owned/leased by the person making such an application for Evacuation Approvals. Further, all transactions between the companies as well as the assets details were maintained in on SAP system, including the Fixed Assets Register and intra-group transaction.

Thus, there was no ‘Fraudulent Transaction’, as contended by the Appellant. Regular Audits were conducted on the transactions, wherein no such incidents were flagged off.

Held:

The Tribunal is of the view, that the Respondents are correct in their stands. Transactions of the respondents were audited, every year, the plea of ‘Fraudulent Trading’ as projected by the Appellant is not proved. Hence, Transfer of Assets among the Group Companies ex-facie is not a Fraudulent Trading, as per Section 66(1) of the Insolvency & Bankruptcy Code, 2016.

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