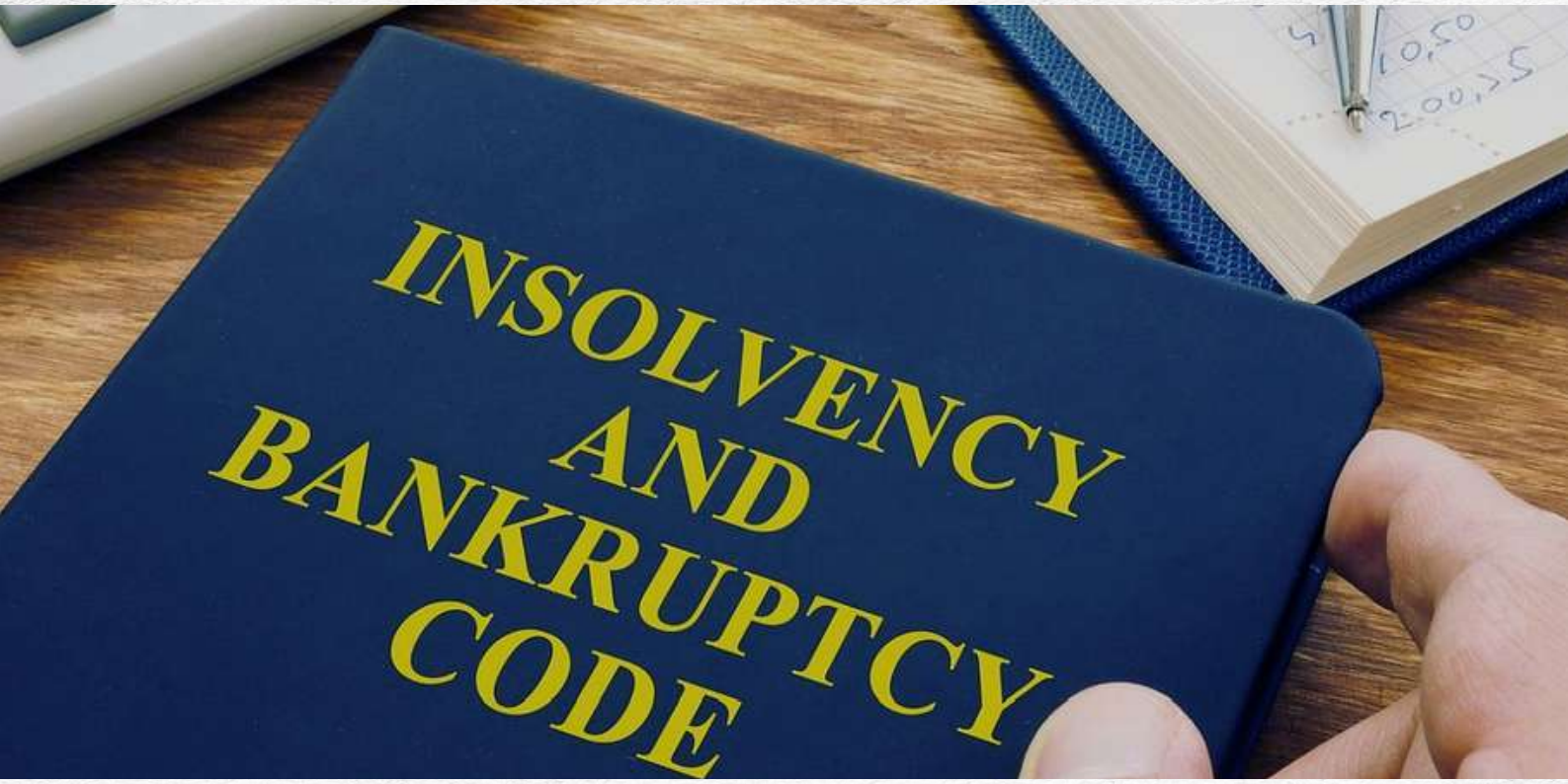
AVM RESOLUTION PROFESSIONALS

RESOLUTION TIMES

Newsletter of a Premier Insolvency Professional Entity

01 January 2023, ISSUE 34



LATEST JUDGEMENTS AND UPDATES

HIGH COURT JUDGEMENT

1.Brilltech Engineers Pvt. Ltd. Vs. Shapoorji Pallonji and Company Pvt. Ltd.

Background

Army Welfare Housing Organization(AWHO), had awarded the work of construction of Twin Tower residential accommodation at Greater Noida to the respondent for carrying out electrification works in the said Project. The respondent had awarded the Work Order for electrical works in the said Project exclusively to the petitioner. The mechanism for executing the Work Order agreed between the parties was that the petitioner shall issue the running account bills (RA Bills) in respect of the work done which would be approved and confirmed by the respondent on the basis of joint inspection conducted by the AWHO and the Architect.

WHAT'S ~~INSIDE THIS~~ ISSUE:

Thereafter, upon the completion of the project an outstanding amount of Rs. 59,76,574/- on which interest @ 24% per annum was payable on the part of respondent and a demand notice was served wherein it was claimed that the respondent was obligated to pay to the petitioner for the work done only upon the receipt of corresponding amount from AWHO. It is claimed that the respondent had been receiving the corresponding payment from the AWHO but it failed to make payments on back-to-back basis to the petitioner. Thus, Section 9 of the Insolvency and Bankruptcy Code (IBC) was filed by the petitioner against the respondent in NCLT, Mumbai for initiating corporate insolvency resolution process.

Contentions:

The applicant submitted that in terms of f Clause 13 of the Work Order , the resolution of disputes is through arbitration. The petitioner had failed to follow the pre-conditions for referral of disputes to the Arbitration and therefore, the petition is not maintainable. Hence, the present petition has been filed under Section 11 of the Act for appointment of the Arbitrator. A petition under Section 9 of the Act has also been filed for attachment of amount of Rs. 2,58,03,143/- lying in the hands of AWHO who is indebted to pay the amount in order to enable the respondent to release the amount in favour of the petitioner.

The respondent submitted proceedings under Section 9 of the Code can be initiated only when the disputes between the parties are non-arbitrable. Hence, the petitioner has expressly rejected any remedy available under the Arbitration Agreement. Further, mandatory Notice under Section 21 of the Act invoking the arbitration has not been served upon the respondent till date. Only a Demand Notice under Rule 5 of the Code, 2016 had been served upon the respondents expressing its intent for initiating corporate insolvency resolution process. It has chosen to approach the NCLT. The petitioner has not specified the date on which arbitration was invoked as per the provisions of the Act which is in contravention of the law as laid down by the Courts. In the absence of the Notice of Invocation of Arbitration, the present petition is liable to be dismissed.

Issues:

i. Existence of Arbitrable Dispute.
ii. Forum Shopping
iii. Notice of Invocation under Section 21 of Arbitration Act.

INSOLVENCY TRIVIA

1. Documents furnished along with application by operational creditors include:

(a) Copy of Invoice
(b) Copy of certificate from the financial institution
(c) Both (a) and (b)
(d) None of the above

2. Name of Resolution professional proposed to be appointed shall be in the application filed by:

(a) Operational and Financial creditor
(b) Financial creditor and CD
(c) CD and Operational Creditor
(d) None of the above

3) IRP shall compile business and financial operations of Corporate debtor for

(a) 2 Years
(b) 3 Years
(c) 4 Years
(d) 5 Years

4) The first meeting of the Committee of Creditors shall be held within days of its constitution:

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

Analysis:

A petition has been filed by the petitioner asserting that a definite amount is payable by the respondent, would not imply that the claimed amount has been admitted by the respondent but is only expressing its inability to be able to pay the claimed amount. Hence, the Demand Notice and in the other proceedings including Section 9 petition as well as in the reply to the present petition that the amounts have been claimed by the petitioner wrongly and the same are not due and payable by the respondent.

The scope of enquiry in the proceedings before the NCLT and before the Arbitrator is absolutely distinct. The petitioner approached NCLT before seeking appointment of Arbitration, it cannot be said that he was indulging in Forum Shopping.

The petitioner has met the prerequisite requirement of service of Notice under S.21 of the Act. The sole purpose of Section 21 is to put a party to notice about the intention of approaching the arbitration which was sufficiently conveyed through Demand Notice and the reply of the respondent.

Decision:

The disputes between the parties are preferable to Arbitration, and Arbitrator to be duly appointed.

NCLAT JUDGEMENT

1. Kalinga Allied Industries India Pvt. Ltd. Vs. CoC (Bindals Sponnge Industries Ltd.)

Background:

The Appeal has been preferred against the order wherein the Adjudicating Authority has allowed the Application preferred by the Committee of Creditors (‘CoC’) seeking a direction to the Resolution Professional (‘RP’) to call for a Meeting at the CoC and consider the Resolution Plan of M/s. Hindustan Coils Limited, (‘HCL’) M/s. Kalinga Enterprises Private Limited (‘KEPL’) and M/s. New Lakshmi Steel & Power Private Limited or any other entity and sought for additional 30 days to consider and approve the most suitable Plan.

ANSWER KEY FOR THE PREVIOUS QUIZ

1.(c) 66%

2. (a) IBBI

3.(c) NCLT

4. (d) Corporate Applixcant

Contentions:

The appellant submitted that the Appellant was not a party in the application, and hence he Adjudicating Authority cannot entertain an Application of a person who has not participate which is d in the Corporate Insolvency Resolution Process ('CIRP') even when such a person is ready to pay more amount in comparison to the SRA, that this Order was never challenged and therefore no new Application can be entertained if a person has not participated in the CIRP.

Further, Resolution Plan approved by the CoC is a 'Contract' and becomes binding between the CoC and the SRA. Moreover, the CoC cannot withdraw approval of the Resolution Plan as more than three years has lapsed and therefore cannot bypass the order of this tribunal.

The respondents in response submitted that he CoC can withdraw and recall its consent given to a 'Resolution Plan' prior to the approval by the Adjudicating Authority relying upon various precedents passed by the same tribunal.

Further, it was submitted that the Commercial Wisdom of the CoC is non-justiciable and hence it is in the domain of the CoC to decide even if at a later stage, which Resolution Plan is more suitable.

Assessment/Decision:

It is observed that strict timelines have to be adhered to and that the Adjudicating Authority lacks the authority to allow the withdrawal/modification of the Resolution Plan by an SRA, as this would defeat the very objective of the statute. At the cost of repetition, it is observed that any modification or a withdrawal (by SRA or otherwise) after approval by the CoC and submission to the Adjudicating Authority, would only lead to further delay and defeat the very scope and objective of the Code.

Further, the existing framework does not provide any scope for effecting any further modifications or withdrawals of the CoC approved Resolution Plan by the SRA or the Creditors. The Adjudicating Authority can interfere only if the Plan is against the provisions of the Code. Once the Plan is submitted to the Adjudicating Authority, it is binding and irrevocable as between the CoC and the SRA in terms of the provisions of the Code. Therefore, no fresh consideration of any Resolution Plan at this stage can be entertained, and hence he CoC cannot consider another Plan of a third party who did not participate in the CIRP Proceedings.

2. Nirmal Kumar Agarwal Vs. State Bank of India & Ors.

Background:

The appeal is filed against the order of NCLT Kolkata Bench, by which an application filed under Section 7 of the IBC by the State Bank of India (Financial Creditor) against the Sungrowth Share and Stocks Limited (Corporate Guarantor) on account of a default committed by the Corporate Debtor (M/s Adhunik Alloys & Power Limited) in paying the financial debt of Rs. 63,04,53,226/- has been admitted.

Contentions:

The appellant submitted that the day on which the application under Section 7 was

filed i.e. 08.06.2018, the registration of Sungrowth as NBFC was in operation, therefore, the application under Section 7 of the Code was not maintainable. Further, the proceedings against the Financial service provider could have been initiated only in terms of Insolvency and Bankruptcy (Insolvency And Liquidation Proceedings Of Financial Service Providers And Application To Adjudicating Authority) Rules 2019 which came into force w.e.f. 15.11.2019 in terms of Section 227 read with clause z k of sub-section 2 of 239 of the Code.

The respondent submitted that the Appellant was not doing financial services as defined under Section 3(16) and therefore, the registration of the Appellant dated 28.03.2001 was cancelled.

Decision:

NCLAT observed that the present proceedings have been initiated against Sungrowth as a corporate guarantor. Section 5(5A) defines Corporate Guarantor which means a corporate person. Corporate person would not include a financial service provider. Thus, Sungrowth having the registration in terms of Section 3(17) as financial service provider by the financial service regulator in terms of Section 3(18) by RBI cannot in any case be called a banking institution.

3. CA V. Venkata Sivakumar Vs. IDBI Bank Ltd.

B**ackground:**

Mr. V. Venkata Sivakumar is the Appellant, the 'Liquidator' of 'The Jeypore Sugar Company Ltd.' Corporate debtor, was replaced by the Adjudicating Authority' on the application of the 1st Respondent, on the basis of the performance review conducted by the 2nd Respondent, the regulator wherein it was discovered that the appellant was not holding valid AFA during the pendency of the project. Hence, the appellant had preffred the appeal against the order passed by Adjudicating authority on the said subject.

Contentions:

The Appellant submitted that post introduction of Regulation 7A of "IBBI" 'Insolvency Regulation 2017'; he applied for 'AFA' on 31.12.2019 for the first time. The 'Appellant' again applied for 'AFA' for second time on 01.08.2020 which was again rejected on 25.08.2020 citing violation of Regulation 7A and disciplinary proceedings were initiated by 2nd and 3rd Respondent. The 'Appellant' submitted that aggrieved from wrong action by the 'Respondents', he moved Writ Petition under Article 226, to High Court of Madras, and an interim injunction was granted and inspite of clear order of Hon'ble Madras High Court, the 1st Respondent persisted with petition before the 'Adjudicating Authority' without making 2nd and 3rd Respondents as necessary parties.

The Respondents submitted that the impugned order has been passed after factoring into account all the facts and relevant laws on the subject, and pointed out that while approving the replacement of the liquidator, all applicable regulations and procedures were fully complied.

Further, the Appellant did not have valid AFA on the date of acceptance of the assignment, and the order of the Adjudicating Authority was very clear that the Liquidator shall strictly act in accordance with the provisions of the I & B Code, 2016 and Rules & Regulations as

amended up to date enjoined upon him and the Appellant gave wrong written submissions and declarations and purposefully concealed the vital information.

Observation and Decision:

The Regulation 7A of IBBI (Insolvency Professional) Regulation 2016, it is clear that no Insolvency Professional shall accept or undertake any assignment after 31.12.2019 unless he holds a valid 'AFA' on the date of acceptance or commencement of such assignment.

The Appellant was appointed as the Liquidator by the order of Adjudicating Authority on 29.05.2020. After carefully examining the dates of the letter by the 3rd Respondent and the impugned order of Adjudicating Authority, it is clear that the Appellant did not have the valid Authorisations for Assignment (AFA) on date of acceptance of the Liquidator.

The Code does not explicitly state the grounds for removing the liquidator, hence in the absence of specific provisions Section 33 & 34 of the Code, 2016 and Section 276 of the Companies Act, 2013, which provides for the removal and replacement of liquidators on various grounds, should be considered.

Further, since the Adjudicating Authority, is vested with the power, to appoint a Liquidator, under Section 33 and 34 of the Code, 2016. Therefore, considering Section 16 of the General Clauses Act, 1897, that an Adjudicating Authority, who also, has the power, to remove the Liquidator.

4. K.G. Somani, Liquidator for Delicious Coco Water Pvt. Ltd. Vs. Rajnish Gupta & Anr.

Background:

This Appeal has been filed against the order passed by the Adjudicating Authority wherein the Adjudicating Authority has directed for filing of application for second motion whereas the only Secured Creditor having given consent to the scheme there was no occasion to direct for second motion, in view of invocation of Section 230 Sub-section 9 of the Companies Act, 2013.

Submissions:

The Appellant submits the sole Financial Creditor is Small Industries Development Bank of India who has already filed an Affidavit dated 10th May, 2022 where Bank has approved the scheme. Further, the sole Financial Creditor having approved the scheme, for issuing any notice under Section 230(5) of the Companies Act and Adjudicating Authority had ample jurisdiction to dispense the notice under Section 230(9) of the Companies Act.

The respondent submits that Bank has already approved the scheme and there was no requirement of issuing notice for Second Motion.

Decision:

The sole Financial Creditor having approved the scheme, the condition as provided in Section 230(9) has been clearly met and the Tribunal can dispense with the calling of a meeting of creditor or class of creditors. Application disposed.

5. Shri Balaji Paper Pack Pvt. Ltd. Vs. Laxmi Crockery (Pune) Pvt. Ltd.

Background:

The Application was filed against the order seeking before the NCLT invoking Section 9 of

IBC, 2016 for initiation of Corporate Insolvency Resolution Process against the Respondent (Corporate Debtor) for defaulting in making payment to the extent of Rs.65,20,061/-.

Submissions:

The appellant submitted that the Operational Creditor supplied packaging materials to the Respondent and raised invoices for such ongoing supply of packaging material amounting to Rs.45,34,589/- as principal amount. The Respondent after several requests for payment, the due amount was not paid. Thereafter, the appellant issued a demand notice.

Further, the respondents raised false and frivolous claims to avoid payment of debt due to the Appellant, in response to the notice. Subsequently, Section 9 Application was filed.

The respondents in response submitted that in reply to the demand notice there is pre-existence of dispute in respect of the payment.

Further, The Appellant supplied the goods to the Respondent, however, the goods supplied were defective and a dispute exists in respect of settlement of accounts of the transactions.

Moreover, the dispute in respect of the payment / transaction is civil in nature and not within the jurisdiction of this Tribunal, and the claim of the Appellant is not maintainable for the reason that the said claim has been set off by the invoices raised against the goods supplied by the Respondent to the Appellant.

Further, the appeal is barred by limitation.

I**ssues:**

(a) Whether there is existence of dispute?
(b) Is it barred by limitation?
(c) Whether the Appellant maintains the pecuniary jurisdiction to entertain the claim?

Observation:

As per Section 8(2)(a) of the I&B Code, 2016, the existence of dispute, if any or, record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. As per the above position of law the dispute must be specific with regard to the same amount. The Respondent failed to raise any dispute prior to issue of demand notice and claim of set off.

Further, the Appellant raised 13 invoices amounting to Rs. 45,34,589/- towards principal due. The Adjudicating Authority taken a stand that out of 13 invoices claimed by the Appellant 11 invoices are time barred i.e. the last invoice dated 23.08.2016 and the Application under Section 9 was filed on 26.08.2019, therefore, it is beyond 3 years as per Section 137 of the Limitation Act. The application is well within limitation.

Further, as per Section 4 of the I&B Code, 2016 the minimum threshold was Rs.1,00,000/- and the amount for the 2 invoices both dated 31.08.2016 was Rs.3,64,100/-, thus, it exceeds the minimum threshold as prescribed under the law prior to the amendment.

Decision:

The order passed by the NCLT is invalid and the same is hereby set aside.

6. Paramvir Singh Tiwana Vs. Puma Realtors Pvt. Ltd.

Background:

RIn this present appeal, the Hon'ble NCLAT referred to catena of various Supreme Court Judgements where it was held that the NCLT does not have residual equity based jurisdiction to direct modifications of claims provided for in the Resolution Plan once the Plan is approved. In Pratap Technocrat Private Limited & Ors Vs. Monitoring Committee of Reliance Infratech Ltd & Anr, the ratio laid down by the Hon'ble Apex Court was that once the Resolution Plan is approved, the NCLT has a very limited jurisdiction except in determining whether the requirements which are specified in sub-Section (2) of Section 30 have been fulfilled or not and cannot interfere in the merits of the 'Business/Commercial Decision of the CoC'.

The issue raised by the Appellant in the present appeals was that there is discrimination between the class of Creditors and that GMADA was paid 100% of the amount in the Books of the Corporate Debtor, though they did not prefer any claim, while the Appellants were given only 25% of the claim amounts which is in violation of Section 30(2) (b) & (e) of the Code.

From the Committee of Creditors of Essar Steel Ltd. Vs. Satish Kumar Gupta & Ors, it is clear that as long as the provisions of the Code and the regulations have been met, it is the Commercial Wisdom of the requisite majority of the CoC which is to negotiate and accept the Resolution Plan, which may involve differential payments to different classes of Creditor, together with negotiating with a PRA for better or different terms which may also involve differences in amounts of distribution between the different classes of Creditors.

Further, it was observed by the Hon'ble SC that the equity principle cannot be stretched to treating unequal equally as it will destroy the very objective of the Code while the NCLT cannot interfere on merits with the commercial decision taken by the CoC, the limited Judicial Review available is to see that the CoC has taken into account the fact that the Corporate Debtor needs to be kept going as a going concern during the CIRP, that it needs to 'maximise the value of its assets' and the interest of all stakeholders'.

In the instant case, what has to be kept in mind was that the Corporate Debtor is a Real Estate Company involved in construction of Housing and Commercial Units and the land on which the construction is to be completed belongs to GMADA.

As the nature of the activity of the Corporate Debtor is dependent on the land owned by GMADA, the commercial decision taken by the CoC to make a provision in the Resolution Plan with respect to the Statutory Dues owed to GMADA, cannot be faulted with, though GMADA has failed to make the requisite claim, as provided for under the Code, but has been in communication with the RP.

Though NCLAT did not appreciate the act of GMADA not having filed their claim, the fact remains that the Real Estate Project was constructed on GMADA land and all approvals, permits and licences involves GMADA, which is a Secured Creditor.

Further, the nature of business and the ground realities were kept in mind by the CoC before taking a commercial decision. In approval of the Resolution Plan, the CoC took a business decision 'based on ground realities, by a majority which binds all stakeholders including dissenting Creditors. Accordingly, the appeal was disposed off.

7. Mr. Abhay Narendra Lodha Vs. Bank of Baroda

The Present Appeal was filed under Section 61 of the Code against the Order passed by the NCLT, Mumbai Bench in C.P. (IB) No. 1807/MB/2018, whereby the NCLT admitted the Application filed by the Respondent Bank.

After hearing the parties, Hon'ble NCLAT stated that the application under Section 7 can be initiated when a default has occurred and there is no such provision that the occurrence of default can be taken into account from the date of NPA. The argument of the Appellant was negated with respect to the contention that the date of NPA is to be treated as date of default. In this regard, the word default has been defined under Section 3(12) of the Code, 2016 "means a non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the Corporate Debtor, as the case may be."

Further, it referred to various decisions of the Hon'ble Supreme Court where it was categorically held that the trigger for Initiation of CIRP by a Financial Creditor is the date of "default" on the part of the Corporate Debtor i.e. actual non-payment of debt repayable by the Corporate Debtor when a debt has become due and payable and not the date of NPA. With regard to the aforesaid finding, a beneficial reference was also drawn to the matter of Laxmipat Surana Vs. Union Bank of India whereby the Hon'ble Supreme Court held that the date of default is to be reckoned for the purpose of Initiation of CIRP and not the date of NPA.

In view of the decision of the Hon'ble Supreme Court, Section 18 of the Limitation Act, 1963 applicable to Section 7 Applications under the Code and held that the acknowledgment of debt by a borrower initiates a fresh period of limitation from the date of acknowledgement of debt. Therefore, the NCLAT affirmed the view taken by the NCLT that the Appeal is within the limitation.

The documents as relied upon by the Respondent Bank was sufficient to establish that there was a debt and default and the NCLT having satisfied that there exists a debt and default and is incompliance with the provisions of law as encapsulated under Section 7 of the Code. Hence, the NCLAT found no error and illegality in the order passed by the NCLT. Therefore, the issue was answered and disposed off accordingly.

8. Rajesh Kumar & Ors. Vs. Rabindra Kumar Mintri & Anr.

The present Appeal was filed against the order passed by the NCLT Principal Bench, by which order, the application filed by 68 home buyers was rejected. In I A. No. 2065/2020 following prayers were made by the Appellants:

a. Pass an order for replacement of Mr. Rabindra Kumar Mintri as the Resolution Professional in the CIRP of the Corporate Debtor with new Insolvency Professional Mr. Sanjeet Kumar Sharma; AND

b. Pass an order rejecting the revised resolution plan submitted by Sunil Kumar Jain & Apoorv Jain (One Group) as being not conforming and on-compliant of Section 30(1) of the Insolvency and Bankruptcy Code, 2016; AND/OR

c. Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case."

In the CIRP of the Corporate Debtor, the Resolution Plan was received and after decision of CoC, the Resolution Plan was put to vote before CoC including 1053 home buyers which was represented by authorized representative and plan was approved by the CoC. Thereafter, Application was filed before the NCLT by 68 home buyers making the prayers as stated above. The NCLT relied on another judgment of NCLT in "Priya Puri & Ors. vs. Mr. Debhashish Nanda & Ors" and dismissed the application of the Appellants holding that in view of the judgment of NCLAT, the objections raised by the Appellants cannot be sustained. Challenging the order of the NCLT rejecting the objections of the Appellants, this Appeal was filed.

It was submitted by learned counsel for the Appellant that the judgment of "Priya Puri & Ors." which was relied by the NCLT was not applicable in the facts of the present case and the Appellants' case is entirely different from the case of those home buyers who had challenged the Resolution Plan in the aforesaid matter. It was submitted that the objections filed by the Appellants are sustainable and ought to have been considered by the NCLT. It was further submitted that the Authorized Representative who is said to have voted has not obtained instructions and approval of the home buyers with regard to different items of the Agenda and in the 6th CoC meeting, several items were deferred without obtaining any opinion of the home buyers which has vitiated the entire process. With regard to feasibility and viability of the Resolution Plan, no opinion was obtained from the CoC and although there was a decision taken in the 7th CoC meeting to obtain views on feasibility and viability. NCLAT considered the submissions of learned counsel for the Appellant and perused the record.

The judgment of "Priya Puri & Ors." (supra) which was relied by the NCLT where one set of home buyers were challenging the various procedures adopted while approving the Resolution Plan and objections were raised by the home buyers. NCLAT relied on the judgment of Hon'ble Supreme Court in "Jaypee Kensington Boulevard Apartments Welfare Association and Ord. vs. NBVV (India) Ltd. and Ors., wherein it was held that the democratic principles of the determinative role of the opinion of the majority have been duly incorporated in the scheme of the code and the minority homebuyers have to necessarily sail with the majority within the class.

When the majority has approved the Resolution Plan which approval was sought to be challenged by one set of home buyers that has been repelled by this NCLAT in Priya Puri's case, the objection raised in the present Appeal are another set of objections raising similar issues regarding voting and other issues.

In the submission of the Appellant, NCLAT observed that the Authorised Representative has not obtained opinion of the homebuyers on different agenda items which have been considered in the CoC meeting. For the Authorised Representative, who is representative of the home buyers to participate in the CoC has to represent the interest of the CoC and it is incumbent upon the Authorised Representative to obtain instructions to vote for the majority for any agenda item where CoC obtain votes.

Where there is no voting of the CoC in an agenda item, the Authorised Representative's opinion can very well be taken note of and considered in the CoC meeting.

Regarding the issue of viability and feasibility of the resolution plan, when the CoC approved the Resolution Plan in its commercial wisdom, it was presumed that the approval was given to a viable and feasible plan. The Resolution Plan being approved, NCLAT also cannot interfere with the commercial wisdom. Approval of the CoC suggested that the plan was viable and feasible. Conclusively, NCLAT did not find any good ground to entertain the present Appeal and hence, it was dismissed.

NCLT JUDGEMENT

1. Excise and Taxation Commissioner Vs. Hitesh Goel, Liquidator for Anandtex International Pvt. Ltd.

Background:

The appeal has been filed by the applicant-Excise and Taxation Commissioner, Haryana Sales Department through its Excise and Taxation Officer under Section 42 of the Insolvency and Bankruptcy Cody, 2016 against the decision wherein the respondent-liquidator, rejected the claim. Further, the appeal has also been filed to seek condonation of delay for filing the claim to the respondent.

Submissions:

Pursuant to the public announcement made by the liquidator on 12.12.2019, the applicant filed its claim amounting to Rs. 1,55,04,684/- for the assessment year 2017-18 before the liquidator on 17.11.2021. Thereafter, the liquidator rejected the claim filed by the applicant on the sole ground that it was filed before the due date without going into the merits of the claim at all.

The respondent in response submitted in terms of the Public Announcement, the Appellant, in accordance with Regulation 12(a) and (b) of the Liquidation Regulations, was required to file a claim with the Liquidator on or before 11.01.2020. The alleged assessment was made against the Corporate Debtor for the assessment years 2017-18 on 18.03.2021 and an alleged demand dated 18.03.2021 for Rs. 1,55,04,684 /- has been raised against the corporate debtor. Since, the claim was filed much after the last date of submission of the claim as prescribed under the Code, i.e. 11.01.2020. Further, the said alleged demand has arisen and has been raised much after the liquidation commencement date and thus, the alleged claim as filed is misconceived and untenable in terms of the provisions of the code. The liquidator thereafter also informed the applicant that same would be considered only after the directions of the NCLT.

Decision:

On analysing the Assessment order it was observed that the ITC has been blocked for the demand against Assessment Year 2017-18, and the Excise and Taxation Authority has not clarified under which Section the charge has been created on the Input Tax Credit of the corporate debtor. However, it has been also noted that under Section 142(8) of the Goods and Services Act, 2017, the authorities can take necessary steps to recover taxes.

Further, it was directed the liquidator in our order in IA 232/2022 to consider the claim of the Excise and Taxation Department as per the relevant provision of the Act. Thus, as the claim of respondent-Excise and Taxation Authorities is already directed to be considered by the liquidator as per the provisions of IBC, there is no justification for attaching the ITC of the corporate debtor by the authorities, as this would adversely affect the business of the CD

and is in the teeth of the objectives of the Code. Consequently, the respondent is hereby ordered to unblock/remove the charge on the Input Tax Credit to the tune of Rs. 83,34,208/- under GST available to the Corporate Debtor.

2. VDB Projects Pvt. Ltd. Vs. Anil Mehta, Liquidator of Pratibha Industries Ltd.

Background:

The application has been filed by the Applicant under Section 60(5) of the Insolvency& Bankruptcy Code, 2016 read with Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 seeking the Applicant be permitted to make deposit after an extension of time to enable the applicant to ensure that the funds are duly obtained from FGRPL.

Analysis and Decision:

The Adjudicating Authority held that IBC, 2016 has been introduced to ensure the resolution of companies facing financial distress (known as Corporate Debtors) and in the failure of the same, the process of liquidation to be done in a time bound manner. Since, the applicant to deposit the consideration vide order dated 03.06.2022 and the same was breached by the Applicant who is now praying for extension.

However, there is no reason to extend the same, given that the Regulation's outer-limit for going concern sale and liquidation prescribes a period of 90 days from the date of receipt of Letter of Intent for the payment of sale consideration, if any sale has to be consummated as a Going Concern.

Accordingly, it was dispossed off.

3. Vemula Amarchand Vs. Krishna Mohan Gollamudi RP for Priyadarsini Ltd.

Background:

Application is filed by the workmen/employees through their authorized representative Vemula Amarchand under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 seeking direction to the Liquidator to accept the complete claim made by the Applicants and to release the salaries.

Submissions:

The Applicant submitted that the erstwhile management did not allow the Applicant Workmen to enter the premises, besides salary was not paid further this cessation of work/termination does not amount to retrenchment procedure as contemplated under Section 25F of the Industrial Disputes Act, 1947. Further, the Liquidation Order passed on 26.04.2021 by this Adjudicating Authority it was held that said order shall be regarded as deemed notice of discharge to the Applicant Workmen.

Further relying on the provisions of ID Act and PF Act, Learned Counsel contended that the Applicant Workmen were in continuous service and the termination of Applicant Workmen was to be effected from the date of Liquidation Order and not from the date of cessation of service.

The respondents in response submitted that a settlement had been entered between the Erstwhile Management of the Corporate Debtor and the Applicant Workmen, regarding payment towards Gratuity Earned Leave (EL), Bonus, Lay Off and Ex-Gratia amount as per

Section 18(1) and 19 of the ID Act read with Rule 60(4) of the Telangana Industrial Disputes Rules, 1958. Additionally, some workmen did not come forward to receive the terminal payments or agreed to accept the amounts under the above settlement and the same workmen have approached this NCLT.

Further, some workmen did not come forward to receive the terminal payments or agreed to accept the amounts under the above settlement and the same workmen have approached this NCLT.

Decision:

It was observed that the applicant has not signed on the Full and Final Settlement, Form-H (Memorandum of Settlement under Section (Section 18 (1) and 19 of Industrial Disputes Act, 1947 read with Section 2(p) and rules made thereunder) and Joint Letter as mandated under Rule 60(4) of the Telangana Industrial Disputes Rules, 1958. Therefore, in the absence of record of acceptance of settlement by the Applicant it is not binding on the same.

Moreover, there is no settlement or accord reached between the Applicant and Suspended Management regarding Payment of the legitimate claims of the Applicant the closure date which was arrived at only by consent cannot be reckoned for the purpose of Settlement of the dues of the Applicant.

Hence the Applicant is deemed to be in employment under the suspended management during the CIRP period.

4. D B Realty Ltd. v/s. Reliance Commercial Finance Ltd.

Interlocutory Application is filed by D B Realty Limited ("the Applicant/Original Respondent") against Reliance Commercial Finance Limited ("Respondent/Original Petitioner"), under Section 60(5) of the Insolvency Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016.

In December 2016, Reliance Capital Limited ("RCL") had sanctioned a credit facility of Rs.2,00,00,000/- ("Facility 1") to the Original Respondent. Thereafter, RCL, the Original Petitioner and their respective shareholders and creditors proposed a Scheme of Arrangement, whereunder all properties, assets, liabilities, permits, licenses, registrations, approvals, contracts and employees etc. of RCL would be transferred to the Original Petitioner. Accordingly, by an order dated December 9, 2016, the Hon'ble Bombay High Court sanctioned the Scheme of Arrangement. Consequently, all properties, assets, liabilities, permits, licenses, registrations, approvals, contracts and employees etc. of RCL were transferred to the Original Petitioner ("Scheme of Arrangement").

Subsequent to the Scheme of Arrangement, in March, 2018, the Original Petitioner sanctioned credit facility of Rs.107,05,00,000/- ("Facility 2"). The Applicant/Original Respondent had availed the Facilities as corporate loan in order to develop a real estate residential project "Orchid Golf View Park" located at Yerwada, Pune.

Thereafter, the Administrator was appointed in respect of RCL, the Original Respondent addressed a letter dated June 24, 2022, to the Administrator and core committee of RCL comprising inter alia BOB, Yes Bank

Bank, State Bank of India, NABARD, Union Bank of India, and Corporation Bank, stating that the Original Respondent is ready and willing to pay a sum of Rs.142,94,00,000/-,towards repayment of the Facilities and interest due thereon in accordance with the repayment schedule as more particularly mentioned in the said letter.

As there was no response to the said letter, the Original Respondent addressed a letter dated July 13, 2022, to the Hon'ble Governor of the RBI and Hon'ble Secretary of Finance stating the aforesaid circumstances and expressing how unfortunate it was that when a borrower is ready and willing to pay the entire principal amount along with interest at a reasonable rate, the lenders do not want to accept the money and initiate frivolous litigation against the borrower to arm-twist and extort money.

Moreover, upon the issuance of Reserve Bank of India Prudential Framework for the Resolution of Stressed Assets Directions 2019 on June 7, 2019, wherein it has been mandated to provide a framework for early recognition, reporting and time bound resolution of stressed assets and if the lenders chose to implement a Resolution Plan, they were required to enter into an inter-creditor agreement ("ICA"). Accordingly, Bank of Baroda the lead bank and other lenders of the Original Petitioner entered into an ICA on July 6, 2019.

The members of the ICA opted for a resolution plan in accordance with the RBI Circular. In view thereof, The Resolution Plan was submitted by Authum Investment and Infrastructure Limited ("Authum") on January 15, 2021, which came to approved on July 15, 2021.

The Appellant pleaded that to implead Authum in place of the Original Petitioner in the present matter as the Original Petitioner has been acting in a high-handed manner and not accepting the reasonable and acceptable offer of the Applicant.

Decision:

In view of the Resolution Plan, it is evident that all claims including the present claim due and payable to the Original Petitioner is covered under the Resolution Plan approved in favour of Authum. In view thereof, the Original Petitioner cannot prosecute the present claim against the Applicant / Original Respondent. The right and correct party, to prosecute the present claim will be Authum as per the Resolution Plan.

5. Vijender Kumar Jain Vs. M/s. Atlas Cycles (Haryana) Ltd.

In this case, an operational creditor filed a petition under Section 9 of IBC, 2016 for initiation of CIRP against Atlas Cycles (Haryana) Ltd. However, during the said proceedings, Mr. Vijender Kumar Jain expired intestate leaving behind 5 legal heirs. The four legal heirs have executed relinquishment deed in favour of the applicant. It was further stated that the said application was filed with limitation i.e. 90 days of the death.

The respondent has stated that legal heirs are not covered under the definition of the operational creditors as defined under Section 5(20) of IBC, 2016. The applicant filed a rejoinder wherein it was stated that the applicant was Class I legal heir of the deceased has subrogated into his shoes, so the applicant has become the operational creditor. The very definition under Section 5(20) of IBC, 2016 as relied upon by the Respondent clearly provides that the OC

includes a person to whom the debt was assigned or transferred. Here, the debt has been transferred in the name of the applicant by operation of law and hence the applicant has to be the operational creditor.

In the present case, it was observed by NCLT that the applicant was a legal heir along with four other legal heirs (daughters) of Vijender Kumar Jain, who was running a proprietorship concern under the name of Arihant Cycles. In this regard, reliance was placed on the judgment of Hon'ble Supreme Court of India in case of Ashok Transport Agency vs. Awadhesh Kumar and Ors dated 31.03.1998.

Thus, judgment of M/s. Double Seven Enterprises Vs. M/s. Vijay Fine Art Press (Supra) relied by learned counsel for respondent was not applicable to the present case. To conclude, in the present case, the applicant had stepped into the shoes of the petitioner being the legal heir/wife of Vijender Kumar Jain (since Deceased).

Therefore, the present application was allowed and the applicant has to continue the proceedings in the present petition and the amended memo of parties was also taken on record. Hence, the present application was disposed of accordingly.

CONTACT US

DELHI NCR - CORPORATE OFFICE
8/28, (3rd Floor), WEA, Abdul Aziz Road, Karol Bagh, New Delhi-110005
011-41486026 / 27
Mr. Manohar Lal Vij
+91 9811029357
Info@avmresolution.com/
mlvij@avmresolution.com

Mr. Pawan Kumar Singal
+91 9560508482
pawansingal@avmresolution.com
Mr. Jagdish Singh Nain
+91 9873088243
jsnain@avmresolution.com

KARNATAKA (BANGLORE)
No. 8, 2nd Main, 9th Cross, Indiranagar I stage, Bangalore 560038

MAHARASHTRA (MUMBAI)
Nucleus House, Saki Vihar Road, Andheri (E),
Mumbai, Maharashtra 400072
022- 28583450.
Mr. Mukesh Verma
+91 9820789105
mukeshverma@avmresolution.com

TAMIL NADU (CHENNAI)
5/5, Iswaryas Essodammai Aptts.,
#5 Madhava Mani Avenue, Velachery, Chennai,
Tamil Nadu- 600042
Mr. Mahesh Ananthachari
+91 9566124770
mahesh@avmresolution.com

ODISHA (BHUBANESWAR)
15 C Jaidurga Nagar, Cuttack Road, Bhubaneswar, 751006
Ph: 0674-
CA Tulsi Bhargava +91-9437028557

GUJARAT (AHMEDABAD)
Asit C. Mehta Financial Services Ltd.,
2nd Floor, Ambalal Avenue, Stadium Chaar Rasta, Off C G Road, Ahmedabad
Ms. Purvi Ambani
+91 9987066111
asit.mehta@avmresolution.com

WEST BENGAL (KOLKATA)
Diamonds Prestige Building
41A, AJC Bose Road, 6th Floor
Suite No. 609, Kolkata 700017

CHANDIGARH / PANCHKULA
H. No. 402, GH – 23, Sector 20, Panchkula, Haryana – 134116
Mr. Inder Jeet Khattar
+91 9729452255
khattarinderjeet@avmresolution.com

MADHYA PRADESH (INDORE)
911, Apollo Premier,
Near Vijay Nagar Sq. Indore-452010
Ms. Chaya Gupta
+91 9827022665
chayagupta@avmresolution.com

RAJASTHAN (BHILWARA)
E-5, Shraman Basant Vihar, Gandhi Nagar, Bhilwara,
Rajasthan -311001
Mr. RC Lodha
+91 7042527528
rishabhlodha@avmresolution.com

MADHYA PRADESH (BHOPAL)
120 , Jharneshwar Colony, Madhuban Vihar, Hoshangabad Road, Bhopal – 462047, Madhya Pradesh
Dr. Vichitra Narayan Pathak
+91 9920166228
vnpathak@avmresolution.com

HARYANA (FARIDABAD)
301, Tower Gracious, SPR Imperial Estate, Sector 82, Faridabad, Haryana – 121004
Mr. Madan Mohan Dhupar
+91 9915031322
dhuparmm@avmresolution.com

UTTAR PRADESH (LUCKNOW)
B – 13, Basement, Murli Bhawan, 10-A, Ashok Marg, Hazratganj, Lucknow, Uttar Pradesh- 226001
0522-4103697
Mr. Bhoopesh Gupta
+91 9450457403
bhoopesh@avmresolution.com

RAJASTHAN (JAIPUR)
E-194, Amba Bari,
Jaipur, Rajasthan – 302039.
Ms. Anuradha Gupta
+91 9414752029
anuradhagupta@avmresolution.com

https://www.avmresolution.com