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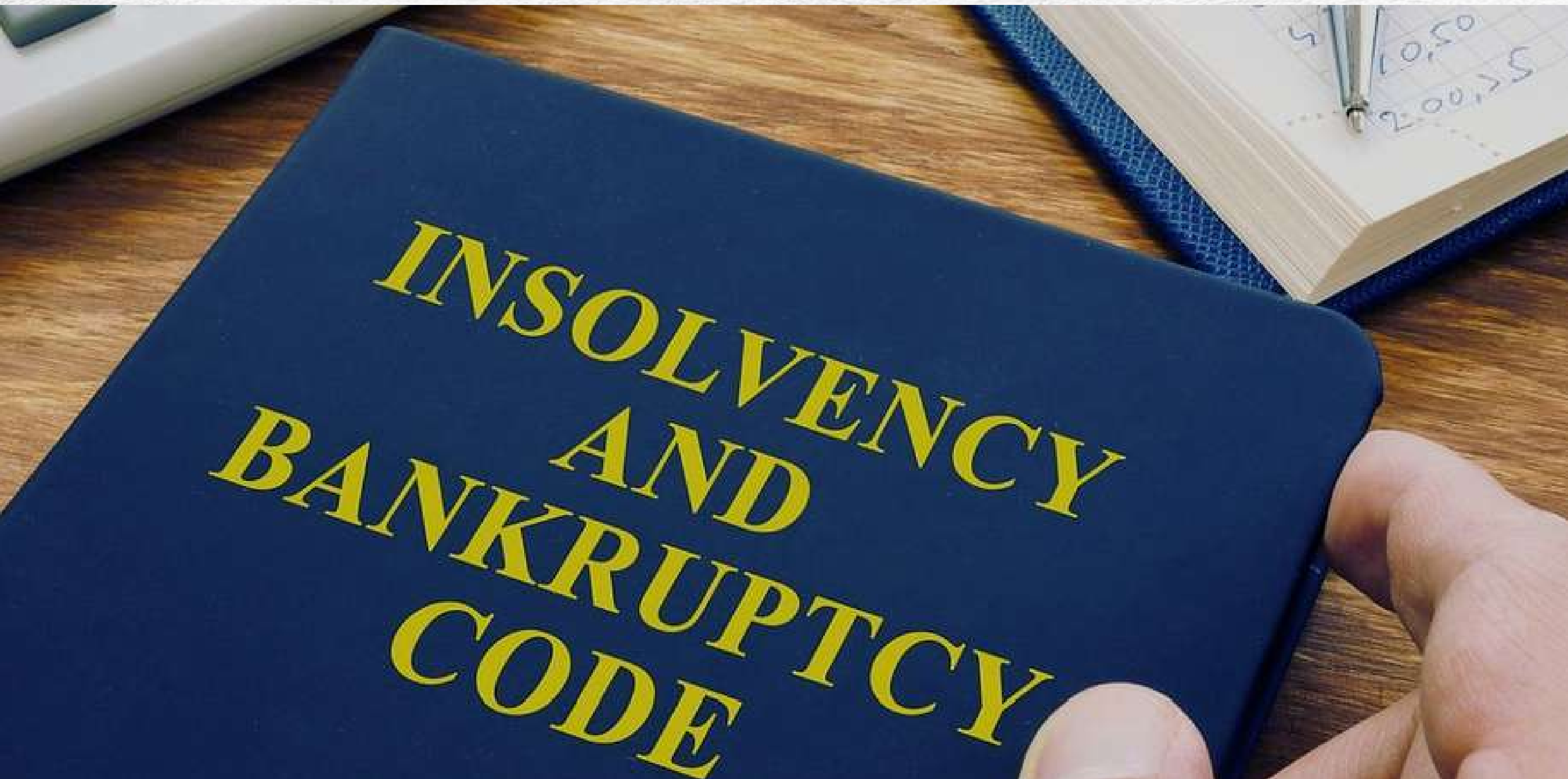

LATEST JUDGEMENTS AND UPDATES

NCLAT JUDGEMENT

1. DBS BANK INDIA LTD. VS. KULDEEP VERMA, LIQUIDATOR OF EASTERN GASES LTD

Issue: Whether the secured creditor's claim has to be confined to the amount of principal and interest as claimed in Form D filed by the secured creditor or secured creditor in addition to the amount claimed in Form D can also claim interest up to date of realisation?

Brief Facts:

Corporate Debtor went into Liquidation and the Appellant being a secured Creditor decided to enforce its security. After selling the assets, the Appellant informed the members of SCC that it is entitled to retain interest amount till the date of distribution and not only the amount at the time of filing the claim.

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Subsequently, the Liquidator filed an Application before AA to seek direction against the Appellant to refund the excess amount along with interest, and the said application was allowed. Hence the present appeal was filed.

SUBMISSION BY APPELLANT

Where the enforcement of the security interest yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor is to account to the liquidator for such surplus. It is submitted that expression used in the sub-section is 'debt' hence the appellant could realize the entire amount with interest up to date and not only the claim which was submitted on the liquidation commencement date.

As per terms of contract between the Appellant and the Corporate Debtor, Appellant could have charged the interest up to date of realization of the amount.

SUBMISSIONS BY THE RESPONDENT

Appellant is only entitled for the amount as was claimed in Form D on the Liquidation Commencement Date.

DECISION OF NCLAT

Form D also clearly mentions that total amount of claim including an interest, "As At The Liquidation Commencement Date". The Liquidation Regulation thus clearly contemplated the claim which also includes the interest "As At The Liquidation Commencement Date".

When a claim is filed in Form D where interest and principal have been included up to the date of liquidation commencement date, claimants cannot be allowed to claim any further amount in addition to the amount which they have claimed in their Form D. There is no merit in the Appeal, the Appeal is dismissed.

2. Express Resorts and Hotels Ltd. Vs. Amit Jain, RP, Neesa Leisure Ltd.

The 14th CoC Meeting was held on 19.10.2020, where it was decided to put all the Resolution Plans for voting. The voting on the Resolution Plans took place post completion of 14th CoC Meeting and e-voting was conducted on 27th October, 2020 and as per voting result, the Resolution Plan of the Appellant was approved by majority of 67.85%. The Resolution Plan of Pacifica (India) Project Pvt. Ltd. and Kundan

INSOLVENCY TRIVIA

1. The Insolvency Professional appointed as the trustee in case of bankruptcy is called as

(a) Liquidator
(b) Insolvency Trustee
(c) Bankruptcy Trustee
(d) Interim Trustee

2. Copy of bankruptcy order shall not be given by adjudicating authority to:

(a) Bankrupt
(b) Creditors
(c) Bankruptcy trustee
(d) IBBI

3) Public notice under bankruptcy shall be given for inviting claims from creditors by:

(a) IBBI
(b) Bankrupt
(c) NCLT
(d) Bankruptcy Trustee

4) The discharge order shall release the bankrupt

(a) From All bankruptcy debts
(b) From75% of all debts
(c) From unsecured debts
(d) From All debts except debts incurred by means of fraud or breach of trust to which he was a party

Group were not approved. On 07.11.2020, the RP issued Letter of Intent to the Appellant. On 09.11.2020, the Adjudicating Authority granted three weeks' time to the RP for filing the Resolution Plan. On 13.11.2020, Performance Bank Guarantee was submitted by the Appellant. The RP, thereafter filed an IA No./851/AHM/NCLT/2020 before the Adjudicating Authority, within the time allowed by the Adjudicating Authority for approval of the Plan. The Application of the RP came before the Adjudicating Authority anfd the Adjudicating Authority.

Contentions:

The appellant contended that Adjudicating Authority has committed error in remitting the Resolution Plan for reconsideration before the CoC, as CoC had already approved the Resolution Plan. Further, RP has filed an application which is pending before the Adjudicating Authority, the majority of Members of the CoC clearly submitted that they do not wish to file any reply to the Application and it was the Suspended Management, who was granted time to file reply.

Therefore, the CoC during the pendency of the Application, cannot have a change in their opinion, and permit to contend before the Adjudicating Authority that Resolution Plan be sent back for reconsideration, since they are in receipt of some better offers as compared to the offer, which has earlier been approved by the Adjudicating Authority.

Thus, The Adjudicating Authority has without there being a valid reason, refused to approve the Plan and remitted the Plan for reconsideration, which is not in accordance with the scheme of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") and CIRP Regulations.

Held:

The present is not a case where in the process, which was completed by approval of the Resolution Plan by the CoC any breach has been committed. When after following the provisions of the Code and Regulations, the Resolution Plan has been approved by the Adjudicating Authority, the said approval by the CoC has to be respected and cannot be interfered with in exercise of judicial review by the Adjudicating Authority.

Moreover, when there is no such ground that the Plan approved, violates any of the provisions of Section 30, sub-section (2).

ANSWER KEY FOR THE PREVIOUS QUIZ

1.(a) 24 hours

2.(d) Committee of Creditors

3.(d) All of the above

4. (c) Preliminary Report

Thus, after coming to know about the financial offer in a Plan, which has been approved by the CoC, any subsequent offer by any entity, who did not participate in the process earlier, cannot be accepted, as it is bound by its own decision taken in approving the Resolution Plan.

3. Mrs. C.G. Vijyalakshmi Vs. Shri Kumar Rajan, RP Hindustan Newsprint Ltd

Background

HNL, a wholly owned subsidiary of 'Hindustan Paper Corporation Limited' ('HPCL'), was established post the agreement between of n Government of Kerala and 'HPCL' on 07.10.1974 for establishment of 'Kerala News Print Project Limited' ('KNPL'), wherein 'HNL' was granted a lease of 3035.15 acres of land for captive plantation for the requirement of raw material for the project.

'HNL' suffered cash loss since 2014 and was unable to repay debts. 'RBL Bank Limited' filed an 'Application' under Section 7, IBC. Subsequently RP was appointed and CoC was formed based on the claims received.

The current appeal has been filed as the RP that in the order of priority under Section 53(i) of the Code, the admitted claim of secured financial creditors is Rs.209.09 Crores which is much more than the liquidation value of Rs.162.70 crores.

Therefore the Liquidation Value payable to Operational Creditors including the employees under Section 53(1) is NIL and that the Resolution Plan provides for 16.31% of the entire admitted claims of the employees and provides for 35.13% of the admitted claims of employees/workmen towards gratuity.

Issue:

1.Whether the Resolution Plan meets the requirement of Section 30(2)(e) of the Code.
2.Whether PF, Gratuity and Workmen/Employees dues have to be paid in full.

Contention:

The appellants contended that the post the deliberation, CoC approved the ''Resolution Plan'' submitted by the 'Resolution Applicant' with 92.72 % voting share and the 'RP' served the 'Letter of Intent' to the 'Resolution Applicant' on 06.01.2021, which was accepted and the 'Performance Bank Guarantee' of Rs. 14.5 Crores was deposited. The said Resolution plan is in contravention of Section 30(2)(e) of the Code as the 'Resolution Professional' and the 'CoC' had ignored the applicability of the EPF and MP Act, 1952 and the payment of Gratuity Act 1972, by allocating only a partial amount towards 'PF' and 'GF' and were not including the interest component.

Thus, employees/workman protection under the applicable law such as EPF and Payment of Gratuity Act has not been considered by the 'CoC'. The amount lying to the gratuity on Employees/Workman cannot be made available to the Creditors and is not liable to attachment under any decree or order of any Court as per Section 10 of the EPF Act, 1952.

The respondents in response, submitted that the RP had received a total claim of Rs. 617.3439 Crores out of which the RP had admitted the claim of Rs. 518.5540 Crores. Pursuant to the invitation of Resolution plan, two plans submitted

wherein in one of the plans were revised and submitted therein, and subsequently the revised resolution plan was accepted. The 'Resolution Plan' was in accordance with law and there has been no non-compliance of any of the provisions of the Code. The PF Dues and Gratuity Claims of all employees were also paid at 35.13 % of the admitted dues at par with Secured Financial Creditors and workman. The Plan duly address all stake holders in a fair and equitable manner.

Further, the RP has admitted the full gratuity of Rs. 10 Lacs and interest of Rs. 1.99.452, respect of Appellant, till the date of commencement of the CIRP, entire gratuity and PF of the Applicants and has not committed any material irregularity.

Decision:

Section 36(4) provides that 'the following shall not be included in the 'Liquidation Estate Assets' and shall not be used for recovery in the Liquidation, and clause (iii) of sub-section 4(a) is relevant which is all sums due to any Workmen/Employee from the Provident Fund, Pension Fund or the Gratuity Fund. Hence, sums due to any Workmen from the above, funds are excluded from the Liquidation Estate. Moreover, PF and Gratuity is to be paid in full as per the provisions of EPF and NP Act, 1952 and payment of Gratuity Act, 1972. Since admittedly the amounts paid are only 35.13% having treated them as Secured Creditors, and hence, there was a violation of the provisions of Section 30(2) of the Code, with respect to the payment of PF and Gratuity only.

Further, The Adjudicating Authority has ample jurisdiction only to interfere with the Resolution Plan in the event that the 'Plan' violates, or does not adhere to any of the provisions of Section 30(2) of the Code.

4. Venus India Asset-Finance Pvt. Ltd. Vs. Suresh Kumar Jain, RP of MK Overseas Pvt. Ltd.

Background

The CoC in its 21st meeting had decided to replace Resolution, thereafter filed an application before the Adjudicating Authority along with the written consent from the proposed Resolution Professional in the specified form. The application for replacement of the Resolution Professional was presented before the Adjudicating Authority by VIAF being one of the main Financial Creditors having majority voting share on the CoC.

By the Impugned Order, the Adjudicating Authority rejected the application for replacement of Resolution Professional. The Adjudicating Authority has held that in their opinion it would be "prudent and advisable" to continue with the same Resolution Professional given that 330 days have already passed from the date of initiation of CIRP and no adverse references have been received by the CoC regarding the performance of the RP.

Aggrieved by the said order, appeal has been preferred by Venus India Asset-Finance Pvt. Ltd. (VIAF), being one of the Financial Creditors of the CD.

Issues:

1.The CoC in passing a resolution to replace the Resolution Professional is in breach of the IBC and regulations.

2.The CoC commercial wisdom is not subject to judicial review?

Contentions

The appellants submitted that in terms of Section 27(2) of the IBC, for replacement of the existing Resolution Professional was approved by the CoC by a voting share of 76.69%. However, in spite of having followed the statutory prescription laid down for replacement of the Resolution Professional, the proposal has been erroneously turned down by the Adjudicating Authority.

The respondents in response contended that Section 27 of the IBC allows for replacement of the Resolution Professional, however the replacement is allowed only during CIRP. Further, the 'CIRP Period' prescribes the tenure of CIRP as 180 days which can go up to a maximum of 330 days after factoring in extension/exclusion periods. The 330 days life span of CIRP of the present Corporate Debtor stood completed on 24.12.2020. Therefore, the decision of the CoC for replacement of Resolution Professional and completion of the voting process both fall outside the purview of the CIRP, and legally invalid.

Decision:

The requisite resolution for replacement was passed with 76.69% vote share, therefore the Resolution Professional and the CoC having acted in conformity with those provisions, and s well within its rights to replace the Resolution Professional. Hence, no violation of the statutory provisions in bringing about the replacement of the Resolution Professional by the CoC and all procedural compliances having been met.

Further, the salient features of IBC is that all the major decisions from the initiation till the end of the CIRP is taken by the CoC and in the conduct of this resolution process, it is aided by the RP. Accordingly, in the present case CoC as per its wisdom decides to replace the Resolution Professional that discretion ought to be allowed to prevail in the interest of smooth and effective completion of CIRP. The Adjudicating authority can only look into the matter wherein the CoC has resolved to that effect with 66% vote share and whether the proposed Resolution Professional has given his written consent, and both the conditionalities stand met in the present case.

Thus, the IBC does not postulate jurisdiction for the Adjudicating Authority to undertake review the decision exercised by the CoC to replace the Resolution Professional, the rejection of the application for the replacement of the RP.

5. Bhavesh Gandhi Vs. Central Bank of India

Background

The Applicant -State Bank of India filed an application, in which resolution process commenced by order dated 21.06.2021 against the Personal Guarantor. Further, an application under Section 95 of the Code was filed by Central Bank of India – Respondent dated 12.10.2021 against the Appellant – the Personal Guarantor of the Corporate Debtor namely Reliance Naval Engineering Ltd. which application came for consideration before the Adjudicating Authority on 18.04.2022.

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Issues:

1.Issue of Multiplicity of applications against same personal Guarantors.

2.Computing period of limitation when a moratorium is enforced.

Contentions:

The appellant contended that, Resolution Professional was already appointed in application by the State Bank of India, there can be no second RP appointed, as has been done by the impugned order dated 13.06.2022. Further, by virtue of order dated 21.06.2021 interim moratorium has commenced, hence, application could not have been filed by the Central Bank of India under Section 95 on 12.10.2021. Hence, The NCLT has committed error in calling for report from the RP.

The Respondents, responded that the impugned order the Adjudicating Authority has not appointed any new RP rather same Resolution Professional, was directed to submit the Report. Moreover, the fact that order was passed on application filed by the State Bank of India against the Appellant – Personal Guarantor on 21.06.2021 does not prohibit the Central Bank of India to file another application. The analogy with respect of Section 7 of I&B Code is not applicable in proceedings under Section 95.

Decisions

The scheme of Code does not contemplate manifold applications against same PG by different lenders. Multiplicity of applications against same PG is not contemplated under Chapter III. When the insolvency resolution process commences against a Personal Guarantor, claims of all creditors are taken care of under the scheme of the Code. Since, the application filed by the CBI on 12.10.2021, thus, was clearly hit by Section 96(1)(b)(ii) and the NCLT could not have proceeded with the said application and appointed the RP.

Sub-Section (6) of Section 60 has to be read in conjunction with Section 60 Sub-Section (1). When Section 60 Sub-Section (1) refers to corporate persons including corporate debtor and personal guarantors, proceedings in which the benefit of Section 60 Sub-Section (6) has to be extended are insolvency resolution proceedings against the Personal Guarantors also. Hence, , creditors of the Personal Guarantors who are unable to file an application due to enforcement of moratorium under Section 96 can very well avail the benefit of period during which moratorium continues, and have every right to file application and for computation of the period of limitation.

6. Principal Commissioner of Income Tax Vs. M/s Assam Company India Ltd.

Background

The Appellants placed demand of Income Tax for Rs. 16,20,25,953/- before the Resolution Professional which were outstanding before the date of admitting the application and the claim was filed in the form of Form – B dated 14.11.2017. On 25.10.2018, the Appellants received a draft of Rs. 41,22,407 from the RP as a tranche payment. Further, the Appellants received another draft of Rs. 78,90,284 vide letter dated 07.01.2019 as a full and final payment totalling to Rs. 1,20,23,691 which was less than 15% of the outstanding demand. The respondent was asked to pay the outstanding demand. However, the Respondent wrote to the Appellants for extinguishing all claims against them relating to the period prior to CIRP period. Moreover, as per the approved resolution plan at clause 12.1 no other amount was to be paid to the Operational Creditors.

Thereafter, Appellants filed an application for review of the order, for necessary directions to the Resolution Professional for submission of the revised resolution plan incorporating the entire amount alleged to be due to the Appellants. Subsequently, the NCLT vide its order dated 22.10.2019 stated that since the Resolution Professional intimated the Appellants that the demand after finalization of appeal by CIT(A) would be payable by the new promoter.

Contentions:

The appellants contended that upon the initiation of CIRP, the appellant claimed the said amount, however, the claim was not being admitted by the respondent, as the Corporate Debtor has considered the claim of the Appellants as contingent liability in the books of accounts of the Company.

Subsequently, the Resolution Professional informed the Appellants that the claim of the Department would not be admitted since the Respondent has preferred an appeal with the Commissioner of Income Tax (Appeals) for both the aforementioned Assessment years. The Respondents submitted that the Impugned Order is bad in law, and NCLT had directed that the emails of the RP are to be treated as part of the resolution plan, it was clearly open to the Income Tax Department / Appellants to take necessary steps available to them under law for recovery of their dues.

Decision:

It was held that the Appellants are 'Government dues' and they are Secured Creditors. Thus, the impugned order dated 10.02.2021 passed by the NCLT is hereby set aside and the matter is remitted to NCLT.

7. Mr. Shahi Md. Karim Vs. M/s. Kabamy India LLP

Background

Aggrieved by the order, passed by the Learned Adjudicating Authority, where Adjudicating Authority has admitted the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'The Code'), the Suspended Director of the 'Corporate Debtor' preferred this Appeal. The Appellant-CD executed an agreement with the Respondent-Operational Creditor on 22.12.2020, wherein the CD appointed the Respondent as a Carrying & Forwarding Agent ('C&F Agent') for the purpose of 'sale of products of the CD.

The OC issued a notice of payment dated 28.06.2022 raising false allegations. Despite repeated requests from the CD to vacate the warehouse of the Respondent, the Operational Creditor kept using the same and making frivolous demands on the CD. Clause 32 of the 'Agreement' mentions 'Arbitration Clause' and it is the case of the Appellant that instead of resolving the dispute, the Respondent filed this Section 9 'Application'.

Contentions:

The Appellant contended that the copy of the Petition was received only on 02.11.2022 however, the circumstances were such that they were not able to reply within time, but the adjudicating authority reserved an ex-parte order. However, the CD immediately after passing of the 'Order' on 05.12.2022, the 'Corporate Debtor' preferred an 'Application' under Section 60(5) seeking the 'Recall Order' dated 21.11.2022 and 05.12.2022 thereafter the 'Phone Number' and the 'Email ID' in the

e-Filing Portal was changed. Subsequently, the 'Corporate Debtor' received an email that the matter was listed 'For Hearing' on 22.12.2022 but the matter was not there in the 'Cause List'. It is argued that the 'Impugned Order' failed to consider the issue of whether 'services' were actually rendered in the absence of any acknowledgement on behalf of the 'Corporate Debtor' in the alleged documents and also that the pending invoices alleged to be raised by the 'Operational Creditor' has never been received by the 'Corporate Debtor'.

Decision:

There is no embargo on the Operational Creditor, to file a Section 9 Petition, under IBC, 2016, even if there is an Arbitration Clause, in the agreement. The scope and objective of the Code is resolution, and not a recovery mode / forum. The NCLT, based on the material on record, had arrived at a conclusion that there were recurring defaults on behalf of the Corporate Debtor and that the Operational Creditor, has requested for full and final payment of the outstanding dues. Hence, appeal is dismissed.

8. Insolvency & Bankruptcy Board of India Vs. GTL Infrastructure & Ors.

Background:

The Respondent (Canara Bank) filed a Company Petition before the NCLT under Section 7 of the IBC, 2016 read with rule 4 of the Adjudicating Authority Rules, 2016 against the Respondent No. 1 (GTL Infrastructure Limited)/ (CD) for the resolution of an amount of Rs. 646,38,06,271. The present appeal has been filed by the IBBI impleading GTL Infrastructure Limited as Respondent and Canara Bank as Performa Respondent..

Moreover, two appeals under Section 61 of the Code have already been filed i.e. CA (AT) (Ins) No. 68 of 2023 'Canara Bank Vs. GTL Infrastructure Ltd.' and CA (AT) (Ins) No. 69 of 2023 'Canara Bank Vs. GTL Ltd.

Contentions:

The Appellant is responsible for the enforcement of various rules and regulations concerning the corporate insolvency resolution and amongst others. Therefore, it becomes imperative for the Appellant to file the instant appeal as the impugned order is based on an incorrect interpretation of the provisions of IBC, inter alia Section 7.

Decision:

The Tribunal has recorded its displeasure while noticing the fact that the appeal has been filed by the board as an aggrieved person which was held to be not maintainable, the Appellant has nothing to do with the litigation between two parties i.e. 'Financial Creditor' and 'Corporate Debtor', in order to challenge the impugned order by which the petition filed by the Financial Creditor has been dismissed for whatever reasons.

9. Rourkela Steel Syndicate Vs. Metistech Fabricators Pvt. Ltd.

Background

The application filed by the appellant (Operational Creditor) under Section 9 of IBC has been rejected on the ground that the application is barred by Section 69(2) of the Partnership Act. NCLT took the view that Section 69(2) of the Partnership Act bars a suit by an unregistered partnership, hence the present Application which was filed by the Appellant against the third party for enforcing a right arising out of contract is barred.

Partnership Act. The Adjudicating Authority took the view that Section 69(2) of the Partnership Act bars a suit by an unregistered partnership, hence the present Application which was filed by the Appellant against the third party for enforcing a right arising out of contract is barred.

Contentions:

The appellant contended that the Application is not barred by Limitation, however, on interpretation of Section 69(2) of the Partnership act, 1932, error has been committed in treating the Application akin to a Suit. It is submitted that Section 69(2) of Partnership Act is not attracted where an Application under Section 9 IBC is filed since Section 9 Application is not a suit so as to apply Section 69(2) of the Partnership Act.

The respondents contended that there has been several precedence of the Apex Court, which has been referred by the NCLT holding that a suit by unregistered partnership is barred filed against the third party.

Decision:

An application under Section 9 of IBC cannot be said to be a suit, basis the analogy of Hon'ble Apex court, is fully applicable to the application filed under Section 9 IBC. Further, to clear it out, provision of Section 5 Limitation Act is also fully applicable in Section 7 & 9 IBC applications.

Section 5 Limitation Act is not applicable in a suit which is also a clear indication that Application under Section 7 & 9 are not a suit.

Hence, Bar of Section 69(2) of Partnership Act does not get attracted since, Section 9 cannot be treated as suit.

NCLT JUDGEMENT

1. State Bank of India v. Meenakshi Energy Ltd.

NCLT Hyderabad in the case of State Bank of India v. Meenakshi Energy Ltd. (IA (IBC)/37/2023 in CP (IB) No. 184/7/HDB/2019) has held that the word "or" used in Regulation 39(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons), 2016 should be read as "and" and accordingly the same treatment should be accorded by the Resolution Professional.

Relevant Clause is reproduced as below:

[(1A) The resolution professional may, if envisaged in the request for resolution plan-

(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once;
or

(b) use a challenge mechanism to enable resolution applicants to improve their plans.

Facts:

Brief facts of the case are such that the Applicant, i.e., consortium of Prudent ARC Ltd. has filed an interim application against the RP of the CD (Meenakshi Energy Ltd. & Ors.) seeking to restrain the RP and the CoC from proceeding with the challenge process as contemplated in clause (b) of the Regulation 39 (1A) of the CIRP Regulations. In the present case, the Applicant emerged to be the H1 bidder on the final date of submission of the plans, however, the RP on the directions of the CoC decided to call for a challenge process and requested the other RAs to improve their plan values. The revised

plans received were of more value than of the Applicant and the Applicant didn't improve its plan. The calling of the challenge process has been specifically challenged in the present application by the Applicant.

Contentions by Applicant:

The Applicant contended that as per the said regulation, any amendment/modification to the plan can only be made once or the RP can employ a challenge mechanism. Further, it was contended that the RP has the power to call for either of the two clauses of Regulation 39 (1A) and cannot deploy both clauses in the resolution process.

It argued that the word "or" as mentioned in Regulation should not be read as "and" which can lead to elongation of the CIRP Process and thereby affect the objective of the Code.

Lastly, it was mentioned that the Regulation is applicable to both the RP and the CoC.

Contentions by Respondent:

The Respondent, on the contrary, argued that the above regulation is only applicable to the RP and not the CoC, and the decision to undertake the Challenge Process was taken by the CoC which was also approved by the majority.

Further, it was contended that as per the terms of RFRP, the CoC is empowered to negotiate with the RAs and also request the RAs to resubmit the proposals on the basis of discussions and negotiations.

It was also submitted that the powers under the regulation are subjected to it being reflected in the RFRP, hence, if the RFRP allows both the methods can be exercised by the RP.

Decision:

After hearing both parties, the NCLT observed that the word "may" in the said regulation provides discretion to the RP, and the word "or" as in the Regulation does not put a restriction on the envisaging of the said methods in the Resolution Plan, provided the same are first placed in the RFRP. Hence, the Adjudicating Authority observed to not read the word "or" in stricto senso. Further, the AA referred to the RFRP and observed that the RFRP provides for the right of the CoC to enter into negotiations, hence, the Regulation 39 (1A) does not restrict the CoC from invoking any of the Clauses a & b under the said regulation. Lastly, on this issue, the AA observed that when there is no restriction on the CoC to allow for modifications of the plan more than once, then putting a restriction on the RP seems to be illogical, since no modifications would be placed by the RP without the proposal being placed before the CoC.

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 NCLT held that IBC, 2016 has been introduced to ensure the resolution of companies facing financial distress (known as Corporate Debtor) 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.

3. 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. 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 Adjudicating Authority.

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 CD 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 CD.

4. SBI vs. Setubandhan Infrastructure Limited

In this matter, the Petitioners/Applicant viz. State Bank of India' sought the Corporate Insolvency Resolution Process of 'M/s. Setubandhan Infrastructure Limited' (formerly Known as Prakash Constrowell Ltd)on the ground, that the CD committed default in repayment of facilities granted to the CD to the extent of Rs. 95,60,36,160.13/- along with interest. The date of default was stated to be 05.04.2019, under Section 7 of the Code.

The Petition revealed that the CD availed certain credit facilities from the Petitioner Bank and the same were sanctioned and granted to the CD from time to time. Further, the account of the CD became NPA on 03.07.2019.

Ld. Counsel on behalf of the Corporate Debtor submitted that the said Petition was incomplete and did not raise any serious legal issue opposing the petition of SBI.

The NCLT stated that the objection of the Corporate Debtor with regard to the incompleteness of the Petition was very trivial and technical in nature and no credence can be given to such objection when once the debt and default are established in a Section 7 Application filed by the Financial Creditor.

After hearing the submissions and upon perusing the documents relied by the Petitioner including the Balance sheet, the Hon'ble NCLT held that the Petitioner has successfully established the existence of "debt" and "default" in this present case.

he above company petition filed by SBI was well within limitation since the Corporate Debtor has acknowledged the liability not only by means of executing the revival letter but also by showing the same in their Balance sheet and thus, it was within limitation.

Hence, the aforesaid petition was admitted.

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