



CENTRE FOR INSOLVENCY AND BANKRUPTCY STUDIES

NATIONAL LAW UNIVERSITY, JODHPUR

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JUDICIAL PRONOUNCEMENTS

I. Bijoy Prabhakaran Pulipra v. State Tax Officer (Works Contract)

- In this case, the issue for consideration was whether the Resolution Professional [hereinafter, “RP”] is empowered to revise the claim of any creditor. Further, can RP file an Appeal before any other statutory authority except NCLT, for verification of any claim, whilst the Corporate Debtor is under CIRP?
- NCLAT clarified that any revision of Assessment Orders cannot be made under the pretext of Section 238 of Insolvency and Bankruptcy Code, 2016 [hereinafter, “IBC”] since this section cannot be read as conferring any appellate or adjudicatory jurisdiction in respect of issues arising under other statutes.
- Further, NCLAT deliberated upon the scope of revision by the RP in the exercise of powers conferred under Regulation 14 of the CIRP Regulations and noted that Regulation 14 only authorizes the RP to exercise power where the claim amount is not precise due to any contingency or other reasons. It also noted that in the present case, the Appellant revised the admitted claim of the Respondent without having the adjudicatory powers given by the GST Act. Hence, the revision of the claim was beyond the purview of the powers/duties as provided under IBC or the CIRP Regulations.

II. S. Ravindranathan Ex-Director of MPL Parts and Services Pvt Ltd v. Sundaram BNP Paribas Home Finance Ltd & Anr

- In this case, the issue was whether simultaneous proceedings be filed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the IBC for the same default.
- It was held that there is no impediment for an Applicant to prefer an application under Section 7 of the IBC, 2016 when the proceedings under SARFAESI Act, 2002 are pending. It was observed that CIRP is not adversarial litigation and unlike a Court of Law, an Adjudicating Authority is not deciding a money claim in a civil suit.
- An Adjudicating Authority’s part is confined to the act of deciding whether the application is complete and whether there is any debt or default. As long as there is an existence of default in terms of Section 3(12) of the IBC, there is no other factor that the Adjudicating Authority may look into to admit an Application filed by a

Financial Creditor. In view of the aforementioned, the Appeal filed by the Ex-Director was dismissed.

III. Intec Capital Ltd v. Eastern Embroidery Collections Pvt Ltd

- In this case, M/s Eastern Overseas, a partnership firm availed loan facilities from Intec Capital Ltd (Financial Creditor) for which Eastern Embroidery Collections Pvt Ltd (EECPL) provided the Corporate Guarantee. However, despite repeated requests, EECPL failed to make the payments to the Financial Creditor as per the agreed repayment schedule provided in the loan agreement, deed of guarantee and other relevant documents. Therefore, the Financial Creditor filed an Application under Section 7 of the IBC for initiating CIRP of EECPL.
- NCLT, New Delhi Bench vide order dated April 27, 2021 (Impugned Order), dismissed the Application filed by the Financial Creditor. Being aggrieved by the Impugned Order, the Financial Creditor filed the Appeal before the NCLAT.
- The issue at hand was whether EECPL is the Personal Guarantor of the principal borrower i.e., M/s Eastern Overseas or EECPL is the Corporate Guarantor of M/s Eastern Overseas, and therefore, Corporate Debtor in terms of Sub-section (7) and (8) of Section 3 of IBC.
- The NCLAT concluded that EECPL was the Corporate Guarantor of the Principal Borrower, M/s Eastern Overseas, and not a Personal Guarantor and in terms of sub-section (7) and (8) of Section 3 of IBC, it is a Corporate Debtor. Accordingly, the NCLAT held that the applicable Rules would be Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as Rules 2 and 3 are both Rules clearly define the applicability of the part of IBC.
- With the aforesaid, NCLAT allowed the Appeal and concluded that the NCLT committed an error in holding that the action should have been initiated against the personal guarantor of the Corporate Debtor under Section 95 of the IBC instead of proceeding against the Corporate Debtor.

IV. Gail India Ltd. v Ajay Joshi (Resolution Professional of Alok Industries Ltd. & Ors

- In this case, the order of the NCLT, Ahmedabad Bench, which had approved the resolution plan in which only operational creditors of Alok Industries Ltd. having

dues less than INR 300,000 were paid in full, while the remainder got no payment, was challenged before the NCLAT. Gail India Ltd., an operational creditor with a claim of INR 5.07 billion, challenged the order claiming that the entire resolution plan is unreasonable and arbitrary as it fails to treat equals as equal, and is not as per the provisions of the Code.

- The NCLAT opined that there is no embargo under the Code on the classification of operational creditors into separate/ different classes for deciding the way in which the money is to be distributed to them by the CoC. The NCLAT also opined that the CoC has the final discretion in relation to the amount to be paid and quantum of money to be paid to a certain category or the incidental category of creditors and that the NCLAT or NCLT has no jurisdiction to gauge the ‘commercial wisdom’ of the CoC. Consequently, the NCLAT dismissed the appeal and upheld the order passed by NCLT while observing that the classification of operational creditors is allowed under the Code.

V. Amanat Randhawa Hotels Pvt. Ltd. v. Shashi Kant Nemani and Ors.

- In this case, the NCLT, New Delhi Bench dismissed an application that was filed by an unsuccessful resolution applicant seeking directions to consider its Expression of Interest. This application was filed after another resolution plan was already approved by the CoC and an application seeking final approval of the resolution plan by the NCLT was pending. This order of the NCLT was appealed before the NCLAT where the unsuccessful resolution applicant contended that the invitation of EoI was not widely published by the resolution professional as required under the Code, and that it had sent an e-mail to the resolution professional for consideration of its plan, however, there was no response to the same.
- The NCLAT observed that a resolution plan has already been approved by the CoC by 100% (one hundred per cent) voting share after the consideration of 9 (nine) plans presented before it. Moreover, the NCLAT observed that the appellant had never participated in the EoI. Based on this, the NCLAT opined that granting of any relief to the unsuccessful resolution applicant would delay the timelines under the Code and upheld the NCLT’s order refusing to entertain any late unsolicited bids. NCLAT held that once a resolution plan is approved by the majority of the CoC as

provided under the Code, no fresh plans can be entertained in the intervention of an already approved resolution plan.

OTHER UPDATES

I. Government amends the rules relating to insolvency of the corporate debtor to ensure time bound insolvency process

- The Insolvency and Bankruptcy Board of India (IBBI) has introduced amendments to the IBBI (Resolution Process for Corporate Persons) Regulations, 2016. In order to address the issue of delays in the corporate insolvency resolution process (CIRP), modifications in the invitation of expression of interest, the request for a resolution plan, the evaluation matrix, and the resolution plan will now only be permitted once. Further, the amendments mandate that the Committee of Creditors (CoC) cannot consider resolution plans that are received beyond the specified period or received from someone outside the final prospective applicants' list or are not in accordance with the law.
- The resolution professional can now use a challenge mechanism to allow resolution applicants to improve their resolution plans. The challenge mechanism has been introduced to improve the transparency of the CIRP while also resulting in the maximization of the value of the corporate debtor.

II. Government amends the rules relating to the liquidation of the corporate debtor

- IBBI has introduced amendments to the IBBI (Liquidation Process) Regulations, 2016 largely increasing the scope of the role played by the Stakeholders Consultation Committee (SCC). Now the SCC can also advise the Liquidator on the appointment of professionals and their remuneration, and also on the sale process to be adopted by the Liquidator, i.e., manner of sale, pre-bid qualifications, reserve price, earnest money, marketing strategy, etc. The Liquidator will also have to place before the SCC in the first SCC meeting the decisions taken prior to the SCC's constitution. If the Liquidator does not follow any advice given by SCC or rejects the highest bid submitted, then the reasons for the same must be mentioned in the next progress report.

- Earlier the representative of each class of stakeholder was selected based on the highest claim. However now, the representative in the SCC shall be selected by a majority vote of present and voting stakeholders of that class. The amendment has introduced certain conditions with respect to the participation fee and earnest money deposit requirements during the sale of assets by the Liquidator. Now the Liquidator cannot require a non-refundable deposit or fee for participation in an auction.

III. Takeover of Jyoti Power Corporation Pvt Ltd

The NCLT, Ahmedabad Bench, vide an order dated October 14, 2021 approved the Resolution Plan submitted by M/s Zaveri and Company Pvt Ltd in the CIRP of Jyoti Power Corporation Pvt Ltd, the Corporate Debtor. The plan was approved with 100% voting share.

IV. Appointment of Chairperson of the Insolvency and Bankruptcy Board of India

The Central Government on 13th October, 2021 assigned additional charge of Chairperson, Insolvency and Bankruptcy Board of India (IBBI) to Dr. Navrang Saini, Whole Time Member, IBBI, in addition to his existing duties. Appointment of Chairperson of the Insolvency and Bankruptcy Board of India