HSA ADVOCATES
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Restructuring & Insolvency

Monthly Newsletter

November 2020

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RECENT JUDGMENTS

Gujarat Urja Vikas Nigam Ltd v. Yes Bank Ltd & Anr

Company Appeal (AT) (Insolvency) No. 601 of 2020

Background facts

- On April 29, 2010, GUVNL and Lanco Infratech Ltd (**Corporate Debtor**) executed a PPA basis which the Corporate Debtor was to generate and supply 15MW of solar power to GUVNL through its solar power plant situated at Bhadrada Village, Sami Tehsil, Patan District, Gujarat (**Solar Power Plant**).
- It is relevant to note that in the same year, the Corporate Debtor availed credit facilities from Yes Bank Ltd (**Yes Bank**), pursuant to which the Corporate Debtor created an exclusive charge in favor of the bank by way of
  - Hypothecation of movable fixed assets and current assets, including receivables pertaining to the Solar Power Project
  - Mortgage of land and immovable assets pertaining to Solar Power Project.
- Thereafter, vide Order dated August 07, 2017, NCLT initiated Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor in terms of provisions of IBC. However, since the same did not yield any favorable results, vide Order dated August 27, 2018 NCLT directed for commencement of liquidation proceedings against the Corporate Debtor.
- Pursuant to the liquidation order, in terms of Section 52 of IBC, Yes Bank sought to realize its secured asset i.e. the Solar Power Plant and accordingly, took possession of the plant in terms of provisions of the SARFAESI Act.
- However, on August 30, 2019, GUVNL issued a notice for termination of PPA (in terms of Clause 9.2.1(e) of the PPA1 and thereafter, GUVNL terminated the PPA.
- Aggrieved by the abovementioned, Yes Bank approached NCLT claiming that if PPA is allowed to be terminated then it would prove to be an obstacle for secured creditors in exercising their rights under Section 52(1)(b) of IBC. It was also contended that continuation of PPA would help in maximizing the value of the asset which is a basic requirement in insolvency proceedings.

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[1] If the Power Producer becomes voluntarily or involuntarily the subject of proceeding under any bankruptcy or insolvency laws or goes into liquidation or dissolution or has a receiver appointed over it or liquidator is appointed, pursuant to law, except where such dissolution of the Power producer is for the purpose of a merger, consolidated or reorganization and where the resulting entity has the financial standing to perform its obligations under the Agreement and credit worthiness similar to the Power producer and expressly assumes of obligations under the agreement and is in a position to perform them.

- Vide Impugned Order dated May 06, 2020, NCLT directed that GUVNL cannot terminate the PPA during the process of liquidation. It consequently set aside termination notice dated August 13, 2019 and allowed Yes Bank to dispose off secured assets. GUVNL was also directed not to act against Yes Bank in pursuance of said termination notice pending disposal of secured assets.

Issue at hand

- Whether moratorium declared under Section 14 of IBC applies to the PPA along with other immovable and moveable properties of the Corporate Debtor?
- Whether contractual provisions of the PPA permit either of the contracting parties to terminate the PPA in view of the liquidation process of the Corporate Debtor which is underway under IBC?

Decision of the Tribunal

- Section 14(1)(b) of the IBC prohibits transferring, encumbering, alienating or disposing off by the Corporate Debtor of any of its assets or any legal right and beneficial interest therein. PPA in the instant matter is in nature of beneficial interest of Corporate Debtor in Solar Power Project and termination of the same would have a direct bearing on the assets of the Corporate Debtor and their value.
- NCLAT acknowledged viability of Clauses 9.2.1(e) and 12.9 of PPA. It was also stated that Corporate Debtor at no point had stopped generating and supplying electricity to Appellant, which was basic premise of PPA and therefore, has not defaulted in fulfilling its liability to provide electricity.
- NCLAT enumerated that the primary objective of IBC is to maximize the value of assets while maintaining the entity as a going concern. It stated that PPA entered into between power producer and purchaser of power i.e. the Corporate Debtor and GUVNL provides a long-term and steady stream of revenue accrual from the project. This forms the economics behind such projects and this economic value of the project of Corporate Debtor, the IBC seeks to maximize during the resolution process.
- Most importantly, NCLAT observed that Solar Power Plant which generates and supplies solar power turns into an economic entity with help of an instrument such as PPA. The physical entity becomes an economic project when it is combined with financial assistance from financial creditors, after deriving comfort and assurance from the steady flow revenue by sale of solar power.
- On the basis of the above findings, NCLAT observed that the physical entity of Solar Power Plant working in conjunction with PPA becomes necessary for maximization of value of assets. This is especially true since power producer is willing to generate and supply power and also in a position to do so to GUVNL. In view of the same, NCLAT held that the termination of PPA by GUVNL does not appear to be justified. Consequently, it dismissed the Appeal.

Our viewpoint

It is relevant to note that in *Gujarat Urja Vikas Nigam Ltd v. Mr. Amit Gupta*, NCLAT observed that a PPA cannot be terminated if Corporate Debtor goes into liquidation, as during the liquidation process also, liquidator is to ensure that Corporate Debtor remains a going concern. Hence, it was acknowledged in the judgment that subsistence of PPA is imperative to ensure that the Corporate Debtor remains a going concern. The judgment in the present matter is based on the same premise and has laid down the law in very clear and precise terms.

It is a well understood fact that a PPA is sine quo non for not only the functioning but the very existence of a Power Project. This judgment, in as much as it ensures the continuity of the PPAs, would bring a sigh of relief to the lenders of the power generators which are undergoing insolvency proceedings as it would help in value maximization. Moreover, provided that the Corporate Debtor is able to fulfil the supply obligations, this decision would ensure that the Corporate Debtor would have a steady source of income and would continue to function as a going concern during the resolution process.

Anup Sushil Dubey Suspended Board Member Umarai Worldwide Pvt Ltd v. National Agriculture Co-operative Marketing Federation of India Ltd & Ors

Company Appeal (AT) (Insolvency) No. 229 of 2020

Background facts

- The Operational Creditor (**Respondent**) and the Corporate Debtor (**Appellant**) entered into a Leave and License Agreement (**Agreement**) for the usage of cold storage facilities on October 01, 2015, for a period of three years. The payment of rentals was to be made on 7th of every month with an increase of 10% in the monthly license fee on or after the expiry of 12 months.
- The Appellant defaulted in the payment of the rental from September 2017 onwards and an outstanding amount of INR 2,14,14,560 became due. The debt was acknowledged by the Appellant vide its various letters yet failed to pay the same. A demand notice was issued dated September 26, 2018 in Form 3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 (**IBC**). In his response, the Appellant denied all the claims.
- Consequently, the Respondent filed an application under Section 9 of the IBC for initiation of Corporate Insolvency Resolution Process (**CIRP**) proceedings before the **NCLT**, which was admitted vide order dated December 20, 2019 (**Impugned Order**).
- Aggrieved by the above order of the NCLT, the Appellant filed the present appeal before the NCLAT.
- The Appellant while relying on the decision of this tribunal in the case of *M. Ravindranath Reddy v. G. Kishan*, contended that the present agreement with the Respondent is a Leave and Licence Agreement and as per the aforesaid decision rentals on immovable properties do not amount to 'Operational Debt' under Section 5(21) of the IBC.
- The Respondents cited the decisions of the tribunal in the case of *Sarla Tantia v. Nadia Healthcare Pvt Ltd*, *Jindal Steel and Power Pvt Ltd v. DCM International Ltd* and the decision of the Supreme Court (**SC**) in *Mobilox Innovations Private Limited v. Kirusa Software Pvt Ltd* to argue that receiving any consideration by the way of license fee fell within the purview of providing 'services', which is incorporated as Operational Debt under Section 5(21) of the IBC

Issue at hand?

- Whether dues arising from the Leave and License Agreement are to be construed as an Operational Debt under the IBC or not?

Decision of the Court

- The NCLAT discussed the requirements for a debt to be an Operational Debt and articulated the following criterion:
  - Claim in respect of provisions for goods and services
  - Employment or debt in respect of dues and
  - Such repayment of dues which should arise under any law in force at that time
- To ascertain the nature of the services provided by the Respondent to the Appellant, the NCLAT relied on the definitions provided under Sections 3(6), 3(11), 3(12), 5(20) and 5(21) of the IBC.
- Acknowledging the decisions of this Tribunal and the SC that were cited by the parties in their respective arguments, the NCLAT observed that the law has not gone into defining goods or services. Hence, the general usage of terms so used with regard to the context in which it is used in law is to be relied upon.
- NCLAT, while arriving at its decision, relied on Bankruptcy Law Reform Committee (**BLRC**) Report. Which had recommended the treatment of lessor/landlords as Operational Creditors.
- NCLAT herein also referred to the Terms and Conditions of the Agreement between the parties, which stated that the premise was leased for commercial purpose, which comes within the definition of 'services' for application of section 5(21) of the IBC.
- Based on the above observations, the NCLAT held that the dues claimed by the Respondent fall within the of definition of 'Operational Debt' under Section 5(21) of the IBC. Furthermore, the NCLAT also stated that there is no illegality or infirmity in the Impugned Order of the NCLT in admitting the application.

Our viewpoint

NCLAT herein has reversed its own decision iterated in the case of *M. Ravindranath Reddy v. G. Kishan*. The instant decision has clarified the prevalent confusion on the issue of lease rentals as Operational Debt, thereby providing a ray of hope to the various lessors who could not claim their outstanding debts by initiating CIRP on account of defaults by the lessees. Going forward, the amount due on account of rentals will be under the purview of goods and services, giving it the status of Operational Debt.

Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt Ltd

Company Appeal (AT) (Insolvency) No. 701 of 2020

Background facts

- An application under Section 9 of IBC was filed by the Operational Creditor (**Appellant**) against the Corporate Debtor (**Respondent**) on May 11, 2020, before NCLT, Chennai (**Adjudicating Authority**) for a default occurring on April 30, 2020. Vide its order dated July 09, 2020, NCLT took note of newly inserted Section 10A of IBC and declined to admit the application and held that there was a bar created by Section 10A coming into force. Aggrieved by this, the Appellant preferred the present appeal before NCLAT.
- Distinguishing the 'initiation date' as provided under Section 5(11) and 'commencement date' under Section 5(12) of IBC, Appellant contended that Section 10A bars filing of an application on or after June 05, 2020, for defaults occurring during the relevant period i.e. on or after March 25, 2020, as mentioned in Section 10A. It does not prohibit initiation of Corporate Insolvency Resolution Process (**CIRP**) of applications that were already filed and pending before promulgation of Ordinance.
- On the other hand, Respondents while determining intent of legislature to insert Section 10A submitted that the bar under Section 10A would apply to all insolvency applications which have been initiated for defaults occurring post March 25, 2020, regardless of whether such application had been filed before the Adjudicating Authority or not.

Issue at hand?

- Whether an application preferred for the initiation of CIRP in respect of default committed before March 25, 2020, but filed before June 05, 2020, is maintainable given the express bar created by the main provision of Section 10A?

Decision of the Tribunal

- Referring to the Principles of Interpretation of Statutes and the concept of purposive interpretation to determine the application of newly inserted Section 10A of the IBC, the NCLAT observed that no statute, unless it deals solely with the procedure, can be construed to have a retrospective operation unless there is an express provision to that effect or same can be inferred by necessary implication.
- The NCLAT also observed that the Section 10A, beginning with a *non-obstante* clause overriding provisions of Sections 7, 9 and 10 of the IBC, places an embargo on the filing of an application for initiation of CIRP of a Corporate Debtor for any default arising on or after March 25, 2020, for a period of six months or such further period as may be notified by the Government, but not exceeding one year from such date. Furthermore, the proviso to the main provision creates an additional bar qua a default that may occur during the specified period. This construction is placed on the proviso adopting purposive interpretation to advance the intended object of the Ordinance.
- It is pertinent to note that the explanation to Section 10A clarifies that the embargo on filing of an application under Sections 7, 9, and 10 of the IBC will not apply in terms of the default committed prior to March 25, 2020.
- Dealing with the issue at hand and referring to the arguments advanced by the Appellant with regard to the distinction between 'initiation date' and 'commencement date', the NCLAT referred to Sections 7(6), 9(6) and 10(5) of the IBC that provide in unambiguous terms that the CIRP shall commence from the date of passing of the order of admission by the Adjudicating Authority. It was further observed that reading the two definition clauses in juxtaposition, it emerges that while the 'initiation date' refers to the filing of the application by the eligible applicant, 'commencement date' refers to the passing of an order of admission by the Adjudicating Authority.
- The bar created is retrospective as the cut-off date has been fixed as March 25, 2020. However, it will be absurd to hold that the embargo would extend to an application filed by an eligible applicant in respect of such default after March 25, 2020 but before June 05, 2020.
- The NCLAT concluded that the bar on initiation cannot operate in respect of applications filed for initiation of CIRP by the eligible applicant in respect of default committed before March 25, 2020, though such application has been filed after March 25, 2020, but before enforcement Ordinance on June 05, 2020.

- Owing to the facts of the present case, the Appellant had filed for a default that was beyond the cut-off date i.e. March 25, 2020, and the bar imposed under Section 10A was attracted. Therefore, in view of the above, the NCLAT held that the order of rejecting the application of the Appellant by the NCLT was perfectly justified and dismissed the appeal.

Our viewpoint

This is a significant judgment as it clarifies the application of Section 10A, which was recently inserted to provide a respite to businesses from the impact of COVID-19 pandemic. The legislature introduced this Ordinance to provide blanket protection to all businesses that were impacted during the lockdown. However, this protection was not intended for businesses that were seeking to avoid liability by resorting to the embargo created under Section 10A of the IBC.

Panna Pragati Infrastructure Pvt Ltd & Anr v. Amit Pareek & Ors

Company Appeal (AT) (Insolvency) No. 515 of 2020 and 516 of 2020

Background facts

- Meghalaya Infratech Ltd. (**Corporate Debtor**) had undergone CIRP as a sequel to the admission of an application under Section 7 of IBC. Mr Amit Prateek (**Respondent**) was appointed as Interim Resolution Professional (**IRP**), who was subsequently confirmed as Resolution Professional (**RP**).
- Thereafter, public announcement was made by IRP for collating claims by creditors, followed by constitution of Committee of Creditors (**CoC**). Thenceforth, Expression of Interest (**EoI**) was invited from various prospective eligible Resolution Applicants. Panna Pragati Infrastructure Pvt Ltd (**Appellant**) also filled the EoI along with various other eligible Resolution Applicants.
- Appellant intended on presenting two Resolution Plans. First plan was presented and considered by CoC in a meeting held on February 11, 2020. Subsequently, Appellant was provided an opportunity to place a Revised Plan before CoC on February 12, 2020. Appellant requested for a 2-day extension to present second plan (**Revised Plan**), but this request was declined, and RP was excluded Appellant from CIRP on ground of paucity of time. The Appellant submitted Revised Plan on February 14, 2020, which was unilaterally rejected by Resolution Professional and never placed before CoC.
- With regard to these decisions taken by CoC, Appellant filed an Intervention Application (**IA**) with a plea to consider and present Revised Plan to the CoC before NCLT, Guwahati Bench (**Adjudicating Authority**), which was rejected vide its order dated March 18, 2020 (**Impugned Order 1**).
- Subsequently, after 7th meeting of CoC held on March 06, 2020, Resolution Plan for CIRP of Corporate Debtor was approved by Adjudicating Authority vide order dated May 18, 2020 (**Impugned Order 2**).
- It is against both Impugned Orders that Appellant filed present appeals before NCLAT. Appellant herein contended that:
  - Expiry of timeline of 180 days as provided under IBC was due on February 24, 2020 and Revised Plan by Appellant was submitted on February 14, 2020, which was well within the time limit. Therefore, RP acted in violation of Sections 25(2)(i) and 30(3) of IBC, by not placing Revised Plan for consideration before CoC.
  - Request of extension of time limit by 90 days beyond stipulated period of 180 days by RP which was granted by Adjudicating Authority vide order dated February 26, 2020, makes it clear that there was no paucity of time to conclude CIRP.
  - Revised Plan by Appellant provided higher value upfront as compared to approved plan. RP, by not considering Revised Plan, has violated basic premise of IBC i.e. maximization of value of the assets of the Corporate Debtor.
- Contrary to the above contentions of the Appellant, Respondent argued that approved Resolution Plan was successfully accepted on February 12, 2020 wherein Appellant/any representative of Appellant did not attend meeting and due to paucity of time, Respondent could not adhere to requested extension nor could their Revised Plan be accepted.

Issue at hand?

- Whether in exceptional circumstances the timelines prescribed under IBC can be relaxed to allow a prospective Resolution Applicant to submit a second/revised Resolution Plan?

Decision of the Tribunal

- After acknowledging materials produced, factual arguments advanced by both parties and co-jointly reading both Impugned Orders, NCLAT observed that facts noticed regarding approval of Resolution Plan of highest bidder by CoC are mutually hostile and exclusive.
- NCLAT took a note of fact that RP had moved an application before Adjudicating Authority for an extension of 90 days and that approved Resolution Plan was submitted only after 7th meeting of CoC which was held on March 06, 2020. Moreover, Resolution Plan submitted was approved by Adjudicating Authority on May 18, 2020. Therefore, contention by Respondent with regards to paucity of time to exclude Appellant from CIRP and reject Revised Plan is unwarranted.
- NCLAT further observed that this is a case of material irregularity in conduct of CIRP by RP, who acted against mandate of provisions under Sections 25(2) and 30(3) of IBC by not placing Revised Plan of Appellant before CoC. This has also resulted in the failure of duty towards the Corporate Debtor by not providing the maximum value of its assets.
- Referring to the decision of *Essar Steel India Ltd v. Satish Kumar Gupta and Ors* wherein SC dealt with the constitutional validity of various provisions of the IBC and struck down the word 'mandatorily' from amended Section 12 of IBC as being manifestly arbitrary under Article 14 of Constitution of India (Section 12 has the effect of ordinarily completing CIRP within outer limit of 330 days but in exceptional cases, Adjudicating Authority or this Appellate Tribunal can extend time beyond 330 days), NCLAT concluded that there was no justification for rejection of Revised Plan by RP who was duty-bound to place the same before CoC, especially when ordinary CIRP period of 180 days was still subsisting.
- In lieu of the above, NCLAT held that both Impugned Orders cannot be supported as they suffer from grave legal infirmities besides involving factual frailty. The Impugned Orders were accordingly set aside and appeals were allowed. Additionally, CIRP was directed to resume from stage of consideration of Resolution Plans. RP was directed to place Resolution Plans of other eligible Resolution Applicants besides Revised Resolution Plan of Appellants before CoC. The period of judicial intervention shall stand excluded while computing extended timeline of 270 days.

Our viewpoint

This judgment is quite significant as it shines a light upon flexibility that can be adopted for the timelines provided under the IBC, to extract the maximum value of the assets of the Corporate Debtor. Furthermore, it also discusses the grounds to assess the conduct of the RPs about the management of the CIRP.

L&T Housing Finance Ltd v. Trishul Developers & Anr

Civil Appeal no. 3413 of 2020

Background facts

- In the present case, Respondent, a registered partnership firm dealing in real estate construction business, sought financial assistance through a term loan of INR 20 crore from Appellant, which was facilitated through a Sanctioned Term Loan Facility vide a sanction letter dated August 07, 2015. Respondent availed of the credit facility by executing a Facility Agreement dated August 11, 2015.
- It is pertinent to note that sanctioning of letters, agreements and notices on behalf of Appellant was done on same letterhead format. Due to subsequent failures of payment by Respondent, a demand notice was sent by Appellant under Sections 13(2) and 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) on same letterhead.
- Respondent proceeded in filing a Securitisation Application before Debt Recovery Tribunal (**DRT**) assailing issuance of demand notices on premise that they had not been issued under a valid name, Appellant instead of name of company 'L&T Housing Finance Ltd.' has mentioned it as 'L&T Finance Ltd.'

- DRT, on ground of the defect not being curable after issuance of demand notice by another group company instead of Appellant, allowed Securitisation Application by Respondent and quashed demand notices issued, vide order dated March 23, 2018. This order was challenged before Debt Recovery Appellate Tribunal (**DRAT**), which vide its order dated April 16, 2019, set aside order of DRT. Further the said order of the DRAT was challenged by Respondent before High Court (**HC**) of Karnataka. HC while setting aside order of DRAT returned its findings in conformity with what was observed by DRT.
- The present appeal has been filed before Supreme Court (**SC**) against order of HC for quashing the demand notices served by the Appellant on ground of same being served under an invalid name.

Issue at hand?

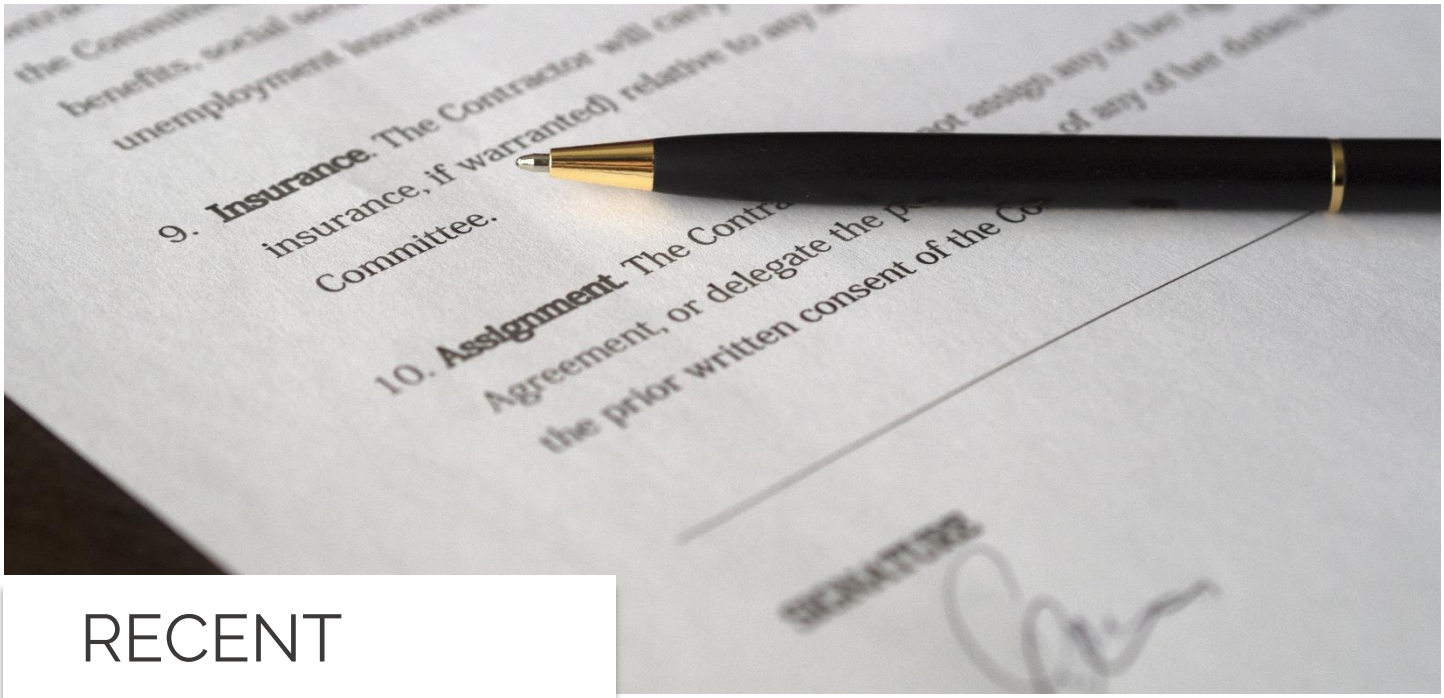
- Can a mere trivial, clerical and non-significant error invalidate a demand notice served under Section 13(2) of the SARFAESI Act?

Decision of the Court

- SC observed that HC and DRT erred in quashing demand notice issued by Appellants to claim defaulted amount by Respondent on the ground of notice being issued under an invalid name. Furthermore, both authorities failed to notice that such Securitisation Application was a feeble attempt by Respondent to seek abeyance of demand notice issued against them.
- SC also observed that at the very inception, the sanction letter was issued on the same letterhead and a notice under Section 13(2) of the SARFAESI Act was served on the same pattern. The Respondent accepted the sanction letter and never objected to the defect even in the reply to the demand notice. The arguments furthered by the Respondent are without any substance as no iota of confusion existed in the knowledge of the Respondent regarding the action taken against them.
- Furthermore, the Supreme Court was of the view that the action taken by the Appellant cannot be held bad in law by merely raising a trivial objection that has not caused any substantial prejudice to the Respondent, and, therefore, no interference by the High Court in its limited scope of judicial review was called for.
- With regard to observations made above, the Supreme Court determined the judgment of the High Court as unsustainable and ordered it to be set aside.
- It also held that the Appellants failed to render assistance and cooperation to the Interim Resolution Professional as required under Section 19 and no defences were available under the IBC to the Independent Directors, thereby rejecting the Appeals.

Our viewpoint

We believe that the Supreme Court intended to emphasize the cause of action causing the prejudice, rather than focusing on the trivial defects which may deflect the proceedings from focusing on the cause of action. It is a significant judgment as it would reduce various frivolous applications that are filed as a ploy to not honor the liabilities placed.



RECENT **DEALS**

NCLT Delhi approves JSW Steel's Resolution Plan for Asian Colour Coated Ispat Ltd.

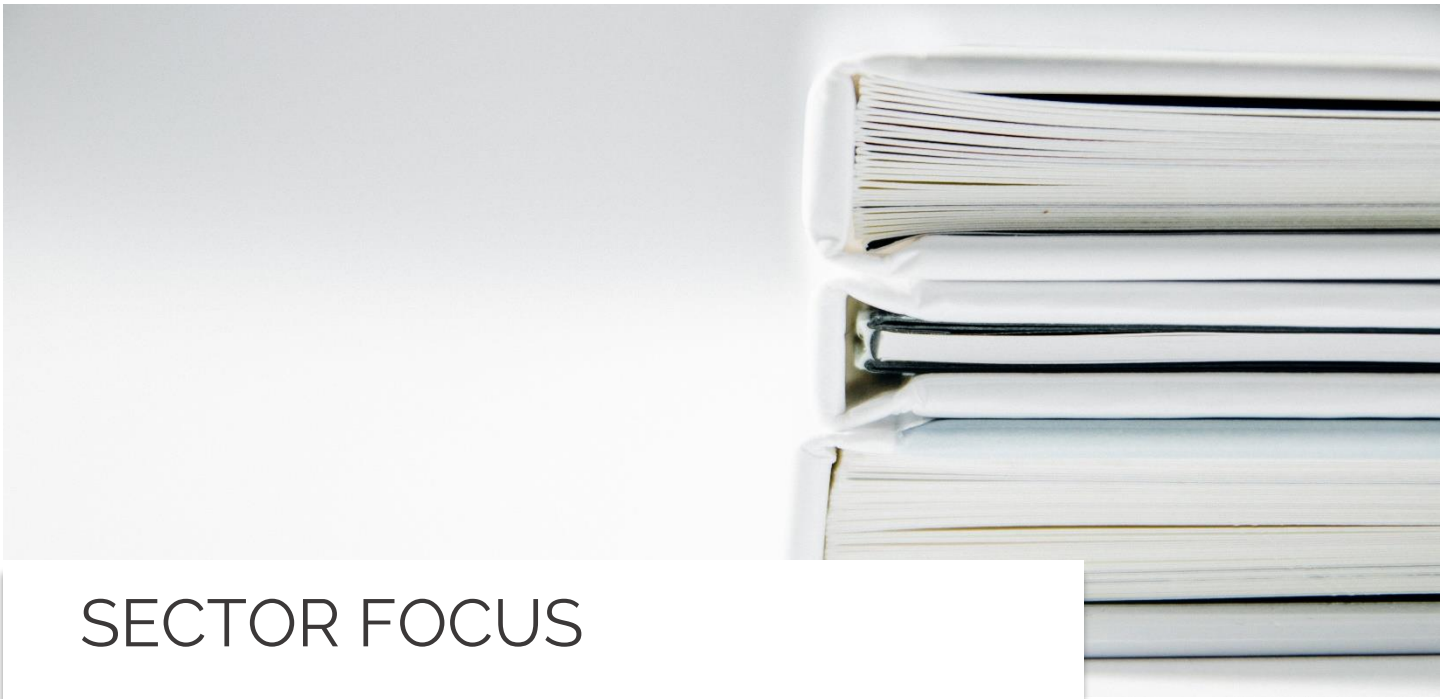
- An application to initiate CIRP proceedings against Asian Colour Coated Ispat Ltd was admitted on July 20, 2018 by the NCLT, Principal Bench. On October 01, an invitation for submitting Expression of Interest was issued by the RP, pursuant to which 12 EOI's were received by the RP.
- On April 06, 2019, successful Resolution Applicant submitted a revised unsigned Resolution Plan. Thereafter, there were various rounds of amendment and on April 24, 2019, Successful Resolution Applicant submitted another revised Resolution Plan to RP, increasing overall resolution amount from INR 1200 crore to INR 1550 crore. Finally, on June 17, 2019, the successful Resolution Applicant filed a final addendum to Resolution Plan. It is pertinent to mention that average fair value of Corporate Debtor was assessed as INR 1298.31 crore and average liquidation value was assessed at INR 619.15 crore. The total admitted claims were INR 7123.22 crore. The said Resolution Plan was approved by the CoC on June 28, 2019 with a voting share of 79.3%.
- Subsequently, the successful Resolution Applicant furnished a performance bank guarantee of INR 100 Crore. The plan was filed for approval before the NCLT on July 10, 2019.
- With regards to regulatory approvals, the Tribunal directed the successful Resolution Applicant to follow the principles under the Competition Act, 2002 after the approval. It further noted that the Corporate Debtor is bound by the RBI Regulations on overseas direct investment.
- The Resolution Plan submitted by JSW Steel finally received the approval of the NCLT vide October 26 ,2020, more than one year after it was filed before the said authority. The delay was caused due to a number of objections being filed against the approval of the plan by the CoC. The NCLT addressed the concerns raised in all of these Applications vide a common order dated October 26, 2020 which also approved the Resolution Plan.

Resolution of VSP Udyog Pvt Ltd by Amit Metaliks Ltd

- An Application to initiate CIRP against VSP Udyog Pvt Ltd was admitted on August 07, 2019 by NCLT, Kolkata Bench. RP received various Resolution Plans for Corporate Debtor. Interestingly, Resolution Plan by successful Resolution Applicant was submitted after last date for submission and could only be considered after an appropriate order by NCLT dated May 29, 2020.
- Accordingly, Resolution Applicant Amit Metaliks Ltd submitted their Resolution Plan on June 01, 2020.
- On June 29, 2020, CoC, after assessing feasibility and viability of submitted plans, declared Amit Metaliks Ltd as H-1 bidder. Thereafter, on July 27, 2020, Amit Metaliks Ltd submitted its revised Resolution Plan, incorporating changes/modifications suggested by RP/CoC.
- Revised Resolution Plan, which offered a total Resolution Plan amount of INR 52.74 Crore against admitted claim amount of INR 1295.83 Crore, was approved by the CoC through e-voting on August 13, 2020 with 95.35% voting share.
- Observing that the assets of the Corporate Debtor are going to rest in a safer hand and that all the mandatory requirements have been complied with, the NCLT approved the aforementioned Resolution Plan on October 20, 2020. It is pertinent to mention that the NCLT observed that 'the RP Rajesh Singhania, deserves special appreciation for finding out a Resolution Applicant, whose Plan has been approved by the Committee of Creditors by 95.35% voting share, even in these difficult times of pandemic, due to Covid-19'.

Resolution of Rayan Laboratories Pvt Ltd

- Vide order dated October 19, 2020, the NCLT, New Delhi Bench approved the Resolution Plan submitted for Rayan Laboratories Pvt Ltd.
- An application to initiate CIRP against Rayan Laboratories Pvt. Ltd. under Section 9 of the IBC was admitted on October 03, 2018 by the National Company Law Tribunal, New Delhi Bench. Thereafter, vide an order dated November 28, 2019, the NCLT had granted the Resolution Applicant an extension to submit a detailed Resolution Plan before the CoC.
- The Resolution Plan which offered a total resolution amount of INR 4.37 crore, was considered by the CoC in its 14th meeting convened on March 23, 2020 and received an approval with 100 % voting share. Further, as per the terms of the Request for Resolution Plan, the successful Resolution Applicant submitted an amount equivalent to 5 per cent of the Resolution Plan amount as performance bank guarantee.
- The CoC also formed a monitoring committee for the smooth implementation of the Resolution Plan.
- Observing that the Resolution Plan is in compliance with all mandatory requirements under the IBC and does not contravene any provisions of the law except Regulation 38(1) of the CIRP Regulations, the Tribunal approved the Resolution Plan vide order dated October 19, 2020. The NCLT further held that the approval is subject to the condition that the amount due to the Operational Creditors under the Resolution Plan shall be paid in priority over the Financial Creditors as required under Regulation 38(1) of the CIRP Regulations.



SECTOR FOCUS

ENGINEERING

- The capital goods and engineering industry comprises mainly of machine tools, electrical machinery, industrial machinery, transport and agricultural equipment, control instruments, oil exploration, mining, earthmoving and construction equipment etc. This sector is critical for the economy, more so in light of it being the supplier of their capital equipment to other industries.
- In recent times, major international players have entered the Indian engineering sector due to the significant growth opportunities which are available. The turnover of the capital goods industry was estimated at USD 92 billion in 2019 and is forecasted to reach USD 115.17 billion by 2025.
- According to the United Nations Conference on Trade and Development (**UNCTAD**), India ranked among the top 10 recipients of FDI in 2019, attracting USD 49 billion in inflows, a 16% increase from the previous year, driving the overall FDI growth in South Asia. FDI inflow in India's miscellaneous mechanical and engineering industries stood at approximately USD 3.64 billion during April 2000 to March 2020 according to the data released by Department for Promotion of Industry and Internal Trade (**DPIIT**).
- Due to the spread of the novel Coronavirus, the engineering sector saw a sharp fall and was pushed back into a deeper recession as lockdown measures led to a significant fall in the orders. Various companies in this sector have undergone or are currently undergoing the insolvency route. According to data released by the IBBI, as many as 177 applications have been admitted as on June 30, 2020, out of which 22 applications admitted have been set aside in Appeal/Review or have been settled. 42 such companies are undergoing liquidation proceedings, taking the total tally to 87 and the rest 90 applications are ongoing CIRP for the machinery and equipment sector.
- A few specific instances of engineering companies undergoing insolvency are recounted below:
  - Tathya Engineering & Infraproject Pvt. Ltd is undergoing liquidation proceedings vide order dated October 07, 2020, passed by the NCLT, Mumbai Bench. The order of liquidation was passed after no resolution could be arrived at through the CIRP proceedings which commenced vide order dated November 16, 2018 and were initiated against the Corporate Debtor by Narsinha Engineering Pvt Ltd under Section 9 of IBC.

It is pertinent to mention that Punjab National Bank was the sole member of the CoC and in third meeting of CoC, noted that since there was no Expression of Interest received in response to advertisements published, there was no possibility of any Resolution Applicant being interested and extension of CIRP need not be sought. CoC in its fourth sitting directed RP to file an application praying for liquidation of Corporate Debtor. The said application was allowed by Bench vide an order dated October 07, 2020

- Vide order dated September 08, 2020, NCLT, New Delhi Bench admitted an application filed under Section 9 of IBC against M/s Unilec Engineers Ltd and ordered for commencement of CIRP proceedings against the Corporate Debtor. NCLT observed that there was a default by UNILEC on account of non-payment with respect to various purchase orders placed by the Corporate Debtor. The NCLT rejected claims raised by UNILEC with respect to pre-existing issues between the parties and admitted the application after being satisfied that C & S Electric Ltd, Operational Creditor has fulfilled the necessary requirements under Section 9 of the IBC.
- UTM Engineering Pvt Ltd, a diversified service provider in the field of underground mining, exploration and geotechnical services, is also undergoing liquidation process before NCLT, New Delhi Bench. The liquidation proceedings were initiated after the Corporate Debtor failed to receive any viable Resolution Plans in the CIRP proceedings that were initiated by Argentium International Pvt Ltd under Section 9 of IBC. The Application was initiated by Operational Creditor for an outstanding principal sum of INR 49,17,591 on account of non-payment of various purchase orders placed by Corporate Debtor. CoC approved liquidation of Corporate Debtor as per Section 33(1)(a) of IBC with 99.28% voting share. Accordingly, RP filed an application praying for liquidation of Corporate Debtor which was allowed by NCLT vide an order dated October 15, 2020.

- Indian engineering sector is of immense strategic importance to the economy owing to its intense integration with other industries and sectors. However, though the economic operations have re-commenced to a certain extent, the growth scenario seems to be grim and dull, thereby creating a debt trap situation for the sector. In light of this, a specific policy dispensation addressing the concerns of this sector would go a long way in alleviating the financial stress.

CONTRIBUTIONS BY

Abhirup Dasgupta | **Partner**

Pratik Ghose | **Partner**

Avishek Roy Chowdhury | **Associate**

Ishaan Duggal | **Associate**

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www.hsalegal.com

mail@hsalegal.com

HSA Advocates

PAN INDIA PRESENCE

New Delhi

81/1 Adchini
Sri Aurobindo Marg
New Delhi – 110 017

Phone: (+91) (11) 6638 7000

Email: newdelhi@hsalegal.com

Mumbai

Construction House, 5th Floor
Ballard Estate
Mumbai – 400 001

Phone: (+91) (22) 4340 0400

Email: mumbai@hsalegal.com

Bengaluru

Aswan, Ground Floor, 15/6
Primrose Road
Bengaluru – 560 001

Phone: (+91) (80) 4631 7000

Email: bengaluru@hsalegal.com

Kolkata

No. 14 S/P, Block C,
Chowringhee Mansions
Kolkata – 700 016

Phone: (+91) (33) 4035 0000

Email: kolkata@hsalegal.com