

# Restructuring & Insolvency

## Monthly Newsletter

**April 2021**

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# STATUTORY UPDATES

## Pre-packaged Insolvency Resolution Process - Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021

- The President of India has promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (**The Ordinance**) on April 04, 2021, to allow pre-packaged insolvency resolution process for Corporate Debtors classified as micro, small or medium enterprises (**MSME**) under the Micro, Small and Medium Enterprises Development Act, 2006.
- In the aftermath of the Covid-19 pandemic, the Central Government via the Insolvency and Bankruptcy Code (amendment) Ordinance, 2020 introduced Section 10A into the Insolvency and Bankruptcy Code, 2016 (**IBC**), which suspended the operation of Section 7, 9 and 10 of the IBC for initiation of fresh insolvency proceedings against the defaults incurred on and after March 24, 2020, for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.
- The Ordinance alters the IBC by introducing the Ordinance as a part of Chapter IIIA of Part II of the Code. Further Section 4 of the Code has been amended to enable the Central Government to notify a pre-packaged procedure for defaults not more than INR 1 Crore.
- A pre-packaged settlement entails a corporation working out a restructuring agreement with its creditors before applying for bankruptcy protection. This helps to reduce the overall time and expense of the process and also ensures a quicker, cost-effective and value maximizing outcome for all the stakeholders. An application for initiating a pre-packaged insolvency resolution process may be made in respect of a Corporate Debtor, subject to the following conditions, that:
  - It has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date
  - It is not undergoing a corporate insolvency resolution process
  - No order requiring it to be liquidated is passed under section 33
  - It is eligible to submit a resolution plan under section 29A
  - The financial creditors of the Corporate Debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as the resolution professional for conducting the pre-packaged insolvency resolution process of the Corporate Debtor, and the financial creditors of the Corporate Debtor, not being its related parties, representing not less than 66%
  - The majority of the directors or partners of the Corporate Debtor, as the case may be, have made a declaration, in a form that may be specified, as to the limitation period along with a declaration of no intent to commit fraud

- The members of the Corporate Debtor have passed a special resolution, or at least 3/4th of the total number of partners, as the case may be, of the Corporate Debtor has passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process
- The Corporate Debtor must obtain approval from its Financial Creditors, who are not connected to it, for the filing of an application to initiate a pre-packaged insolvency resolution procedure, in such form as may be stated, representing not less than 66% in value of the financial debt due to such creditors.
- The pre-packaged insolvency resolution phase must be completed within 120 days of the pre-packaged insolvency start date. The moratorium will be in place from the pre-packaged start date until the process is completed, whether by resolution plan approval or otherwise.
- During the pre-pack period, the Corporate Debtor will remain under the current promoters' and management's control and custody. On the grounds set out in Section 61(3) of the Code, the Ordinance appeals against an order authorizing the pre-packaged resolution plan.
- By introducing a new facet of insolvency, the Government appears to be attempting to provide an alternative and efficient resolution mechanism. This is a positive development, but it was hoped that a similar platform would apply to non-MSME businesses. Prepacks will assist Corporate Debtors in reaching an agreement with lenders and handling the company's entire liability. A proper implementation of the Pre-Packaged Insolvency regime would benefit both the Debtor (MSME's) and the Creditors as higher resolution values could be achieved due to the quick process involved as compared to the steps involved in the Resolution Process under the IBC. Overall, it is expected that with the pursuit of the proposed Draft framework, a positive impact will be seen on the financial health of the debt market. However, a concrete conclusion can only be arrived at after this framework is approved and comes into effect. In addition to this The Government needs to further enhance the NCLT's infrastructure for proper utilization of the aimed benefits to introduce pre-packs.

## Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021

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- In exercise of the powers conferred by Clause (t) of Sub-Section (1) of Section 196 read with Section 240 of the IBC, the Insolvency and Bankruptcy Board of India (IBBI) on March 04, 2021 notified the following amendments into the IBBI (Liquidation Process) Regulations, 2016 (**Principal Regulations**).
- Substitution of the existing Sub-Regulation (2)<sup>1</sup> of Regulation 31 of the Principal Regulations with '*the liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.*' It is pertinent to note that the present amendment has removed an additional step under Sub-Regulation (2) of Regulation 31 of the Principal Regulations i.e., announcement of the list of stakeholders in public who have filed their claims in the liquidation of the Corporate Debtor.
- Further, under Sub-Regulation (5) of Regulation 31 of the Principal Regulations, a sub-Clause (d) has been inserted according to which the list of stakeholders of the Corporate Debtor shall now be filed on the electronic platform of IBBI for dissemination on its website. However, the proviso to the same provides that this clause shall apply to every liquidation process ongoing and commencing on or after March 05, 2021. The purpose of this requirement is to improve transparency and enable stakeholders to ascertain the details of their claims at a central platform.
- In pursuance of the above, the IBBI via circular dated March 04, 2021, has made available an electronic platform at [www.ibbi.gov.in](http://www.ibbi.gov.in) for filing and updating the list of stakeholders. The platform permits multiple filings by the liquidator as and when the list of stakeholders is updated by the Liquidator and has directed the insolvency professionals to file the list of stakeholders of the respective Corporate Debtor under liquidation and modification thereof, in the format provided, within three days of the preparation of the list or modification thereof, as the case may be. The filings due as on the date of circular are now required to be filed within 15 days of the circular.

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<sup>1</sup> 31. List of stakeholders-

(2) The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of claims, and the filing of the list shall be announced to the public in the manner specified in Regulation 12(3)

## Guidelines for Appointment of Insolvency Professionals as Administrators under the SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018

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- The IBBI and the Securities Exchange Board of India (SEBI) have mutually agreed to use a Panel of Insolvency Professionals for appointment as Administrators for effective implementation of the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 (**Regulations**). The said Regulations provide for appointment of Insolvency Professionals as Administrators for the purposes specified therein.
- In view of the above, the IBBI released a circular dated March 09, 2021, providing the set of Guidelines which have been prepared in consultation with SEBI to facilitate appointment of Insolvency Professionals as Administrators.
- According to these Guidelines the IBBI shall prepare a Panel of IPs keeping in view the requirements of SEBI and the Regulations and the SEBI shall appoint the IPs from the Panel as Administrators, as per its requirement in accordance with the Regulations. The Panel shall be valid for six months and a new Panel will replace the earlier Panel every six months.
- The eligibility criteria of the Insolvency Professionals to be included in the Panel is as follows:
  - There is no disciplinary proceeding, whether initiated by the IBBI or the IPA of which he is a member, pending against him
  - He has not been convicted at any time in the last three years by a court of competent jurisdiction
  - He expresses his interest to be included in the Panel for the relevant period
  - He undertakes to discharge the responsibility as an Administrator, as and when he may be appointed by the SEBI
  - He has made the compliance under Regulation 7(2) (ca) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 for the year 2019-20
  - He holds an Authorization for Assignment (AFA), which is valid on the date of expression of interest
- The panel shall have Zone-wise list of Insolvency Professionals. An Insolvency Professional will be included in the Panel against the Zone where his registered office (address as registered with the IBBI) is located.
- To select the Insolvency Professionals, the IBBI shall invite expression of interest from Insolvency Professionals in 'Form A' to act as Administrator by sending an e-mail to their email addresses registered with the IBBI and hosting the guidelines on IBBI's website. The expression of interest must be received by the IBBI in Form A in the manner and date as specified.
- The participating Insolvency Professional must understand that, in case such professional is selected in the panel then he must not:
  - Withdraw his interest to act as an Administrator
  - Decline to act as Administrator, if appointed by SEBI
  - Surrender his registration to the IBBI or membership or AFA to his IPA during the validity of the Panel
- Further, the following conditions must be understood by the Insolvency Professionals prior to submitting their respective Expression of Interest:
  - An Insolvency Professional in the Panel will be appointed as Administrator, at sole discretion of SEBI
  - The submission of Expression of Interest in accordance with these guidelines, is an unconditional consent by the Insolvency Professional to act as Administrator in accordance with the Regulations
  - An Insolvency Professional who declines to act as Administrator, on being appointed by SEBI, shall not be included in the Panel for the next five years, without prejudice to any other action that may be taken by the IBBI
- In addition to the aforementioned terms and conditions pertaining to the selection of an Insolvency Professional into the Panel, the Circular dated March 09, 2021 also provides for the weightage (%) given to each parameter (Number of Ongoing Processes, Number of Completed Processes as IRP/RP, Number of Completed Processes as Liquidator/Bankruptcy Trustee (C)) for selection of an Insolvency Professional into the Panel. Further details can be accessed from [here](#).

## Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021

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- In exercise of the powers conferred by Clause (t) of Sub-Section (1) of Section 196 read with Section 240 of the IBC, IBBI on March 15, 2021 notified the following amendments into the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).
- Insertion of 'Regulation 12A - Updation of Claim' to the CIRP Regulations after Regulation 12. The newly inserted Regulation i.e., Regulation 12A directs all the creditors of the Corporate Debtor to update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the Insolvency Commencement Date<sup>2</sup>.
- Further, to keep a track on the status of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, a Sub-Regulation (1A) has been inserted after Sub-Regulation (1) of 'Regulation 40B - Filing of Forms' of the CIRP Regulations. The Sub-Regulation (1A) directs the Interim Resolution Professional or Resolution Professional, as the case may be, of the Corporate Debtor to file an additional Form CIRP 7 as per the timelines and format provided in the notification dated March 15, 2021.
- It is pertinent to note that subsequent filing of Form CIRP 7 shall not be made until thirty days have lapsed from the filing of an earlier Form CIRP 7. Only one Form shall be filed at any time whether one or more activity is not completed by the specified date and this amendment is applicable for all the processes ongoing as on the date of this circular
- In addition to the above amendments, a new format for filling 'FORM C - Submission of claim by Financial Creditor' has also been introduced.

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<sup>2</sup> (12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under Sections 7, 9 or Section 10, as the case may be





# RECENT JUDGMENTS

## Small-Scale Industrial Manufactures Association (Regd.) v. Union of India & Ors

Writ Petition (C) No. 476 OF 2020

### Background facts

- The RBI on March 27, 2020 issued the Statement of Development and Regulatory Policies (**RBI Circular**) where *inter alia* certain regulatory measures were announced to mitigate the burden of debt servicing brought about by disruptions on account of Covid-19 pandemic and to ensure the continuity of viable businesses.
- The Notification dated March 27, 2020, issued by the RBI was primarily for rescheduling payments – Term Loans and Working Capital Facilities. As per the RBI notification, all the commercial banks, cooperative banks, all India Financial Institutions, and NBFCs were permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020 and the repayment schedule for such loans as also the residual tenor will be shifted across the board by three months after the moratorium period. Thereafter, due to the extension of the nationwide lockdown, the RBI, by a subsequent notification dated May 23, 2020 directed all commercial banks to extend the moratorium by another three months, i.e., from June 01, 2020 to August 31, 2020.
- The relief in the notifications dated March 27, 2020 and May 23, 2020 by the RBI was followed by a condition that interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.
- Aggrieved by this condition of accrual of interest on outstanding loan payments during the moratorium period, various MSME associations, real estate sector associations along with various other borrowing parties approached the Apex Court via several Writ Petitions seeking complete waiver of the accrued compound interest/interest during the moratorium period along with extension of the moratorium period beyond August 31, 2020.
- To this effect, the counsel for the Petitioners advanced their arguments on the deficiency on the part of the Central Government to recognize the severity and magnitude of the pandemic and the financial distress caused not only to each and every individual but also to various industrial sectors of the economy.
- To support their arguments pertaining to the cause and effect of the RBI Circular, the Petitioners argued that the aspects of 'disaster management', which *inter alia* include grant of relief and concessions to the distressed community of borrowers affected by the disaster, had not been considered. Reliance was placed

on Section 72<sup>3</sup> of the Disaster Management Act, 2005 (DMA) to state that the provision of the DMA has an overriding effect over other laws and authorities. Thus, Section 134 of the DMA casts duty upon the National Authority to recommend relief in the matter of repayment of loans and/or grant of fresh loans on 'concessional terms' to the persons affected by the disaster.

- In view of the above, it was concluded by the Petitioners that the RBI was not the statutory authority, though it may have a supportive role to play to take a decision in regard to the measures of relief and concession to the disaster affected persons arising out of the task management under the DMA, 2005.
- Per Contra, the Counsels for the Respondents, particularly the Central Government and the RBI, argued upon the extent of the word 'Moratorium' with regard to definition by the RBI in the RBI Circular and stated that the word moratorium was never intended to be 'waiver of interest' but 'deferment of interest', therefore, the payment of interest and interest on interest was merely deferred and was never waived.
- It was also brought to the notice of the Court by the Counsel of the Central Government that in order to provide further relief from the financial distress and the burden of being declared insolvent, the Central Government via Insolvency and Bankruptcy Code (Ordinance) 2020 dated June 05, 2020 had provided protection to the Corporate Borrowers by suspending the operations of the Section 7, Section 9 and Section 10 of the Insolvency and Bankruptcy Code, 2016.
- Further, contending the arguments made by the Petitioners pertaining to the overriding effect of DMA, 2005 as per Section 72 and thereafter the application of Section 13 of the DMA, 2005, the Respondents relied upon the decision of the SC in the matter of *Pradip Kumar Maity v. Chinmoy Kumar Bhunia*<sup>5</sup>, and *Union of India v. Kumho Petrochemicals Co Ltd*<sup>6</sup>, and contended that the word 'may' used in Section 13 of the DMA, 2005 is to be read as an enabling discretionary provision and not mandatory. Therefore, the same is to be considered as a 'recommendation' and not as an 'obligation'.

### Issues at hand?

- Waiver of compound interest/interest on interest and total interest during the moratorium period
- Extension of moratorium period beyond August 31, 2020
- Further reliefs to support and reduce the financial burden endowed upon the effected parties in the backdrop of Covid-19

### Decision of the Court

- Pursuant to the arguments made by the parties, SC reserved itself from adjudicating upon matters concerning commercial wisdom and intricacies of trade and commerce as it has a limited scope of judicial review in economic policy matters. The Court further reiterated the decision laid down in the matter of *State of M.P. v. Nandala Jaiswal*<sup>7</sup> and *BALCO Employees' Union (Regd.) v. Union of India*<sup>8</sup>, whereafter it was observed that wisdom and advisability of economic policies are not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. What is best in the national interest what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and the RBI on the aid and advice of the experts. The same is a matter for decision exclusively within the province of the Central Government and such matter do not attract the power of judicial review. In view of this, the SC refused to grant relief sought by the petitioners to issue any Writ of Mandamus directing the Central Government and RBI to declare/announce further relief packages.
- Pursuant to the arguments made by the parties, SC reserved itself from adjudicating upon matters concerning commercial wisdom and intricacies of trade and commerce as it has a limited scope of judicial review in economic policy matters.

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<sup>3</sup> Section 72 - **Act to have overriding effect.**- The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

<sup>4</sup> Section 13 Relief in loan repayment, etc. - The National Authority may, in cases of disasters of severe magnitude, recommend relief in repayment of loans or for grant of fresh loans to the persons affected by disaster on such concessional terms as may be appropriate.

<sup>5</sup> (2013) 11 SCC 122 (para 6)

<sup>6</sup> (2017) 8 SCC 307 (paras 34 & 35)

<sup>7</sup> (1986) 4 SCC 566

<sup>8</sup> (2002) 2 SCC 333

- The Court further reiterated the decision laid down in the matter of *State of M.P vs. Nandala Jaiswal*<sup>9</sup> and *BALCO Employees' Union (Regd.) v. Union of India*<sup>10</sup>, whereafter it was observed that wisdom and advisability of economic policies are not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. What is best in the national interest what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and the RBI on the aid and advice of the experts. The same is a matter for decision exclusively within the province of the Central Government and such matter do not attract the power of judicial review. In view of this, the SC refused to grant relief sought by the petitioners to issue any Writ of Mandamus directing the Central Government and RBI to declare/announce further relief packages.
- The Court also briefly shed light upon the overriding effect and statutory obligations on the National Authority as per Section 72 and Section 13 respectively of the DMA, 2005 and was in agreement with the arguments advanced by the Respondents, that the word 'may' used in Section 13 of the DMA, 2005 is to be read as an enabling discretionary provision and not mandatory.
- Further, with regard to the relief sought on complete waiver of the interest charged on the loan during the moratorium period, the Court premised its decision around the working of the banking system with regard to the payment of interest by the Bank to all its depositors irrespective of the amount deposited and stated that even during the moratorium period as per the RBI Circular, the liability of the Banks and the Lenders to pay interest to its depositors continued. Therefore, to grant a complete waiver of interest on the loan instalments during the moratorium period would have a far-fetching financial implication in the economy of the country as well as on the banks and other lenders. Therefore, no such total waiver of interest can be granted as the same would cause prejudice to the entire economy.
- However, while concluding its observations, the Court, in the interest of justice to all concerned parties, inclined itself towards the fact that once the payment of instalment is deferred as per the circular dated March 27, 2020, the non-payment of instalment during the moratorium period cannot be said to be wilful and, therefore, it is not justified to penalise the borrowers by charging interest on the interest/compound interest accrued for the period during moratorium.
- In view of the above observations, SC refused to adjudicate upon the economic decision taken by the Central Government and the RBI and also refused to extend the moratorium beyond August 31, 2020 as provided under the RBI Circular. With regard to the effect that will be caused on the economy of the country, the Supreme also refused to grant total waiver of the interest on the Loan Payments which was accrued during the moratorium period. Lastly, the Court directed the Banks to not charge any interest on interest/compound interest/penal interest for the period during the moratorium and any amount already recovered under the same head (i.e. interest on interest/compound interest/penal interest) shall be refunded to the concerned borrowers and to be given credit or adjusted in the next instalment of the loan account.

### Our viewpoint

In our opinion, this judgment has brought a sigh of relief to the banks by saving a total loss of almost 6 Lakh Crores that would have been caused in case the total waiver on interest would have been allowed. Further, a balanced decision has been taken by the Court while maintaining the integrity of the Principle of Separation of Powers. This decision has granted relief regarding the interest-on-interest structure and saved the additional burden which would have been caused to the borrowers. However, in this backdrop with the government agreeing to bear the burden of compound interest waiver, the ultimate burden of this exercise will fall on the average taxpayer. This, compounded with the pressure on the borrowers and the precarious position of the economy, is likely to throw up a number of challenges which will have to be overcome collectively.

<sup>9</sup> (1986) 4 SCC 566

<sup>10</sup> (2002) 2 SCC 333



## P. Mohanraj & Ors v. Shah Brothers Ispat Pvt Ltd

Judgment dated March 01, 2021 in Civil Appeal No. 10355 of 2018 with other Appeals and Writ Petitions

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### Background facts

- Shah Brothers Ispat Pvt Ltd (**Respondent**) supplied steel products to Diamond Engineering Pvt Ltd (**Company**) and its three directors (**Appellants**), for which 51 cheques were issued by the Company in favor of the Respondent. However, all cheques were returned dishonored due to insufficient funds.
- The Respondent then, issued two statutory notices to the Company and Appellants under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (**NI Act**) and when these proved unsuccessful, the Respondent filed criminal complaints against them under these two Sections, before the Additional Chief Metropolitan Magistrate, Mumbai. Thereafter, the Magistrate issued summons to the Company and to the Appellants on both the complaints.
- In the meantime, the Respondent issued a notice to the Appellant under Section 8 of the IBC and later filed an application as an operational creditor under Section 9 of the IBC. Thereafter, the National Company Law Tribunal (**NCLT**) admitted the application and directed commencement of CIRP and accordingly, a moratorium was declared in terms of Section 14 of the IBC. However, the NCLT stayed the Respondent's criminal complaints.
- Aggrieved by the decision of NCLT, the Respondent filed an appeal before the NCLAT which set aside the NCLT's decision and held that Section 138 'being a criminal law provision', proceedings under it did not fall within the mischief of Section 14 and were, thus, unaffected by the moratorium. Aggrieved by the order of the National Company Law Appellate Tribunal (**NCLAT**), the Appellants then approached the Supreme Court (**SC**) which reinstated the interim stay that had been initially granted by the NCLT. Subsequently, the moratorium came to be lifted since the Resolution Plan submitted by the promoters of the Company was approved by the committee of creditors and the NCLT.

### Issues at hand?

- Whether the institution or continuation of a proceeding under Section 138/141 of the NI Act is hit by a moratorium under Section 14 IBC?
- Whether proceedings under Section 34 of the Arbitration and Conciliation Act are covered by moratorium under Section 14 of IBC?

### Decision of the Court

- At the outset, the SC noted that sweep of Section 14(1)(a) of the IBC was wide and the expression 'institution of suits or continuation of pending suits' is to be read as one category, and the disjunctive 'or' before the word 'proceedings' implies that the proceedings against the Corporate Debtor would be a separate category.
- The SC placed reliance on several cases including *Pioneer Urban Land & Infrastructure Ltd v. Union of India*<sup>11</sup> and *Vikram Singh v. Union of India*<sup>12</sup> and held that the interpretative cannons of ejusdem generis and noscitur a sociis are only rules of construction and cannot be interpreted to nullify the plain meaning of words used in a statute if they are used in a wide sense.
- The SC held that Section 32A 'liability for prior offences' of the IBC threw no light on the true interpretation of Section 14(1)(a) of the IBC and the reason for the former's introduction had nothing to do with any moratorium provision but the extinguishment of criminal liability of the Corporate Debtor from the date a Resolution Plan is approved and so that a new management may make a clean break with the past and start on a new slate. It was further held that Section 32A advertently takes within the umbrella Section 138 proceedings which will cease to be an offence qua the Corporate Debtor after the moratorium period comes to an end with a Resolution Plan by a new management being validated by the Adjudicating Authority.
- The SC carefully inspected the judgement relied on by the Respondent *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd*<sup>13</sup> in which the Delhi HC held that a Section 34 application to set aside an award under the Arbitration and Conciliation Act, 1996 would not be covered by Section 14 (1)(a)

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<sup>11</sup> (2019) 8 SCC 416

<sup>12</sup> (2015) 9 SCC 502

<sup>13</sup> (2019) 4 SCC 17

of the IBC which empowers the adjudicating authority to declare a moratorium for prohibiting all of the following, namely – the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority. The SC rectifying this, held that the judgement does not state the law correctly as a Section 34 proceeding is certainly a proceeding against the Corporate Debtor which may result in an arbitral award against the Corporate Debtor being upheld, because of which monies may then become payable by the Corporate Debtor. Furthermore, the Supreme Court stated that Section 34 proceedings are proceedings against the Corporate Debtor in a court of law pertaining to a challenge to an arbitral award and would be covered just as an appellate proceeding in a decree from a suit would be covered. This judgment does not, therefore, state the law correctly.

- The SC reiterated the principles laid down in *Aneeta Hada v. Godfather Travels & Tours Pvt Ltd*<sup>14</sup> holding that the moratorium provision contained in Section 14 of the IBC would apply only to the Corporate Debtor, the natural persons mentioned in Section 141(1) and (2) continuing to be statutorily liable under the Negotiable Instruments Act. Furthermore, the SC reversed the Bombay HC and the Calcutta HC judgments in *Tayal Cotton Pvt Ltd v. State of Maharashtra*<sup>6</sup> and *MBL Infrastructure Ltd v. Manik Chand Soman*<sup>15</sup> by stating that a Section 138/141 proceeding against a Corporate Debtor is covered by Section 14(1)(a) of the IBC.
- In view of the above, the SC allowed the civil appeal and the judgment under appeal was set aside clarifying that the Section 138/141 proceeding will continue both against the company as well as the appellants.

### Our viewpoint

The SC's judgement that a Section 138/141 proceeding under the NI Act against a Corporate Debtor for cheque dishonor will be subsumed by the moratorium period is cardinal as it fulfils the objectives of Section 14 of the IBC of resuscitating the Corporate Debtor during CIRP. Once the Corporate Debtor's stress is resolved under a Resolution Plan, the new acquirer would not be liable for criminal prosecution under Section 138 of the NI Act by virtue of Section 32A of the IBC. Besides, the SC also erased the ambiguity regarding the scope of Section 14 in the Arbitration proceedings by clarifying that an application under Section 34 of the Arbitration and Conciliation Act to set aside an award is covered by moratorium under Section 14 of the IBC.

## Arun Kumar Jagatramka v. Jindal Steel and Power Ltd & Anr

Judgment dated March 15, 2021 in Civil Appeal No. 9664 of 2019 with Writ Petition (C) No. 269 of 2020 and Civil Appeal No. 2719 of 2020

### Background facts

- Gujarat NRE Coke Ltd (**GNCL/Corporate Debtor**), filed an application for initiation of Corporate Insolvency Resolution Process (**CIRP**) under Section 10 of the IBC. The NCLT admitted the application and passed an order to initiate the CIRP of GNCL.
- Mr. Arun Kumar Jagatramka, a promoter of GNCL submitted a Resolution Plan for GNCL to its Resolution Professional. The plan was scheduled to be voted on by the Committee of Creditors, however, on the same day, the Parliament enacted the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which inserted Section 29A to the IBC. Accordingly, Mr. Arun Kumar Jagatramka became ineligible to submit a Resolution Plan.
- Due to absence of a Resolution Plan and expiry of 270 days, the NCLT passed an order of liquidation, which upon challenge by Mr. Arun Kumar Jagatramka was dismissed by the NCLAT. The dismissal of the appeal by the NCLAT was assailed before the Supreme Court, which issued notice to GNCL.
- During the pendency of the aforesaid appeal before NCLAT, Mr. Arun Kumar Jagatramka filed an application under Sections 230 to 232 of the Companies Act, 2013 before the NCLT, proposing a scheme for compromise and arrangement between the erstwhile promoters of GNCL and its creditors. The NCLT allowed the said application and issued directions for convening a meeting of the shareholders and creditors.

<sup>14</sup> (2012) 5 SCC 661

<sup>15</sup> 7CRR 3456/2018

- Aggrieved by the NCLT's order, Jindal Steel and Power Ltd (**JSPL/Operational Creditor**) of GNCL filed an appeal before the NCLAT, which reversed the NCLT's decision and held that a person who is ineligible under Section 29A of the IBC to submit a Resolution Plan, is also barred from proposing a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013.
- Aggrieved by the decision of NCLAT, Mr. Arun Kumar Jagatramka filed an appeal before the SC.
- Further, a Writ Petition was also filed by Mr. Arun Kumar Jagatramka on a limited issue of notifications dated July 25, 2019 and January 6, 2020 which inserted Regulation 2B into the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Regulations**), as being ultra vires the IBC and the Companies Act, 2013, and violative of Articles 14, 19 and 21 of the Constitution.

### Issue at hand?

- Whether a promoter of the Corporate Debtor is eligible to file an application under Sections 230 to 232 of the Companies Act, 2013 for compromise and arrangement, while he is ineligible under Section 29A of the IBC to submit a Resolution Plan?

### Decision of the Court

- At the outset, SC noted the salutary objectives of the IBC and that any interpretation of the IBC must be in a manner to facilitate such salutary objectives requiring all stakeholders to shed concepts and notions associated with the earlier legal regime. It was further noted that the objectives shall be achieved in a manner so as to ensure that the past management does not gain re-entry through the backdoor through disingenuous stratagems. This was in furtherance of the idea of preservation of the Corporate Debtor laid down in the case of *Swiss Ribbons Pvt Ltd & Anr v. Union of India & Ors*<sup>16</sup>
- SC elaborately dealt with the eligibility as to who can apply under Section 230 of the Companies Act, 2013. The Court went on to observe that a liquidator is only an additional person and not the exclusive person who shall be permitted to move an application. This implied that under the IBC, the liquidator, a member or even a creditor can, under the auspices of Section 230 of the Companies Act, 2013 (**CA 2013**), propose a scheme of arrangement. Further, it was held that Section 230 of CA 2013 cannot be made a ploy to let defaulting promoters acquire Corporate Debtors after a failed resolution.
- While arriving at its decision, SC used the principle of harmonious construction between the two statutes; namely, the Companies Act, 2013 and the IBC, to ensure that a scheme of compromise or arrangement under Section 230 is pursued in a manner which is consistent with the underlying principles of the IBC since the scheme is proposed in respect of an entity which is undergoing liquidation under Chapter III of the IBC. As such, the company must be protected from its management and a corporate death simultaneously.
- Further, SC upheld the constitutional validity of Regulation 2B of Liquidation Regulations, which stipulates that a person who is not eligible under the IBC to submit a Resolution Plan for insolvency resolution of the Corporate Debtor shall not be a party in any manner to such compromise or arrangement. Additionally, the Supreme Court clarified that the proviso to Regulation 2B is clarificatory in nature and even in the absence of Regulation 2B, the ineligibility under Section 29A read with 35(1)(f) of the IBC would still make a member or a promoter ineligible to propose a scheme for revival under Section 230 of the Companies Act, 2013.
- SC also held that there shall be no embargo on any member or creditors' right to vote in a meeting, even if such person is ineligible under Section 29A. SC referred to the eligibility of directors and used the analogy to determine that even under Section 230 of CA 2013, there shall be no embargo and all members or creditors or class of such members or creditors shall have a right to receive notice of the class meeting and consequentially have a right to vote as well; irrespective of their ineligibility under Section 29A of the IBC.
- With regards to one of the arguments made by the Appellant on withdrawal under Section 12A of the IBC, which permits the Corporate Debtor to return to its old management, the SC while placing reliance on *Meghal Homes Pvt Ltd v Shree Niwas Girni K. K. Samiti*<sup>17</sup> held that a withdrawal is not intended to be a culmination of the resolution process but is meant to lead to a status quo ante.
- In view of the above, SC concluded that a person who is ineligible under Section 29A of the IBC to submit a Resolution Plan, cannot propose a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013.

### Our viewpoint

The present judgment at last brings about clarity on the purpose of Section 29A of the IBC, which is to achieve a sustainable and effective revival of the Corporate Debtor. SC has, in this judgment clarified that it would be absurd to allow a person who is ineligible under IBC for submitting a Resolution Plan to propose a compromise or arrangement under the Companies Act, 2013.

<sup>16</sup> (2019) 4 SCC 17

<sup>17</sup> (2007) 7 SCC 753

# Sesh Nath Singh & Anr v. Baidyabati Sheoraphuli Co-operative Bank Ltd & Anr

Judgment dated March 22, Civil Appeal No. 9198 of 2019

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## Background facts

- Debi Fabtech Pvt Ltd (**Corporate Debtor**) availed a cash credit facility of INR 1 Crore from the Baidyabati Sheoraphuli Co-operative Bank (**Financial Creditor**). However, the Corporate Debtor defaulted in repayment of its dues and its account was declared as a non-performing asset by the Financial Creditor on March 31, 2013.
- Subsequently, the Financial Creditor issued a notice to the Corporate Debtor under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**), providing it 60 days to clear the outstanding debt. In response to the said notice, the Corporate Debtor made a representation opposing the Financial Creditor's demand. The Financial Creditor then rejected that objection, giving the Corporate Debtor another 15 days to make the payment, however, the Corporate Debtor still failed to comply with the same. Hence, the Financial Creditor issued a notice under Section 13(4)(a) of the SARFAESI Act, taking possession of the secured assets.
- Challenging the said notices, the Corporate Debtor filed a Writ Petition in the Calcutta HC. During the pendency of the Writ Petition, the Financial Creditor made a public declaration of its takeover of the Corporate Debtor's assets and a Magistrate later confirmed such takeover. However, the Calcutta HC passed an interim order on July 24, 2017 restraining the Financial Debtor from taking any further actions under the SARFAESI Act since, prima facie, co-operative banks, like the Corporate Debtor were not entitled to invoke the provisions of the SARFAESI Act.
- Thereafter, the Financial Creditor filed an application on August 27, 2018 for initiation of CIRP of the Corporate Debtor under Section 7 of the IBC. Sesh Nath Singh, acting for the Corporate Debtor opposed the application on the ground that the Writ Petition challenging the maintainability of the proceedings under the SARFAESI Act was already pending adjudication in the Calcutta HC. While rejecting both the contentions, the NCLT, Kolkata Bench vide order dated April 25, 2019 admitted the application and passed an order to initiate the CIRP of the Corporate Debtor.
- Aggrieved by the NCLT's order, the Corporate Debtor filed an appeal before the NCLAT, contending that the Financial Creditor's application under Section 7 of IBC was barred by limitation, since the cause of action accrued (on March 31, 2013) almost five years prior to the filing of application under Section 7 of the IBC (on August 27, 2018) and the period of Limitation under Section 137 of the Limitation Act, 1963 (Limitation Act) is three years from the date of default, therefore, the Application by the Financial Creditor was barred by Limitation.
- Dismissing the appeal, the NCLAT vide order dated November 22, 2019 (**Impugned Order**) held that the Financial Creditor had bona fide and timely initiated proceedings under the SARFAESI Act, and thus it was entitled to exclude the time spent under 14(2) of the Limitation Act in proceedings under the SARFAESI Act, while reckoning the period of limitation for an application under Section 7 of IBC.
- Aggrieved by the decision of NCLAT, the Corporate Debtor filed an appeal before the SC.

## Issues at hand?

- Whether delay beyond three years in filing an application under Section 7 of IBC can be condoned, in the absence of an application for condonation of delay made by the applicant under Section 5 of Limitation Act?
- Whether Section 14 of Limitation Act applies to applications under Section 7 of IBC? If so, is the exclusion of time under Section 14 available only after the proceedings before the wrong forum terminate?

## Decision of the Court

- At the outset, SC noted that IBC, being a statute to consolidate and amend the laws relating to reorganization and insolvency resolution, its provisions are to be interpreted in a manner that best achieved its objects; and considering the clear language used in Section 6 and 7 of the IBC, the trigger point for initiating proceedings in insolvency resolution is the occurrence of a default.
- SC observed that the IBC did not originally apply the provisions of the Limitation Act to proceedings under it. However, Section 238A was incorporated in the IBC vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, with effect from June 6, 2018, providing that the provisions of the Limitation Act shall, 'as far as may be', apply to proceedings/appeal before the NCLT/ NCLAT. The SC further observed that while reading these words with Section 238 'granting the IBC an overriding effect', it is clear that all the provisions of the Limitation Act will apply to proceedings under the IBC, to the extent feasible.

- SC noted that applications under Section 7 of the IBC were governed by Article 137 of the Schedule to the Limitation Act, which provides that the period of limitation for such an application is three years from the date of default, and that a delay in such filing could be condoned under Section 5 of the Limitation Act provided sufficient cause was made out.
- Further In order to condone the delay beyond three years as provided under Section 5 of the Limitation Act, the SC briefly described the contours of the application of Section 18 of the Limitation Act i.e. ‘Effect of Acknowledgment in writing’ and observed that an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgment is signed. However, the acknowledgment must be made before the expiration of the period of limitation.
- SC further noted that such condonation of delay is at the discretion of NCLT/NCLAT and is to be exercised liberally to advance substantial justice. The SC observed that though, it is the general practice to make a formal application under Section 5 of Limitation Act, there is no bar for the Court/Tribunal to exercise its discretion to condone delay, in the absence of a formal application.
- With regard to the Appellants’ contention that proceedings under the SARFAESI Act did not qualify for exclusion under Section 14 of the Limitation Act, relying on the Explanation of Section 14 which excludes both the days on which the prior proceeding was instituted and the day on which it ended, the Supreme Court held that the said Explanation is clarificatory in nature and the substantive provisions of Sub-Sections (1), (2) and (3) of Section 14 of the Limitation Act does not stipulate that Section 14 can only be invoked on termination of prior proceedings, prosecuted in good faith.
- SC clarified that the term ‘court’ in Section 14(2) of the Limitation Act implies to any forum for a civil proceeding and that shall also include Tribunals/forums under the SARFAESI Act. Accordingly, it held that Section 14 of the Limitation Act excludes the time spent in proceedings in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction, or other such cause.
- Lastly, in view of the above, SC affirmed the decision of the NCLAT and held that Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing ‘sufficient cause’ i.e., if there are sufficient materials on record disclosing sufficient cause for the delay.

### Our viewpoint

This is an extremely relevant order for Banks/Financial Institutions and asset reconstruction companies since it gives them an opportunity for extension of limitation periods for exercising their legal remedies in cases of defaults. Moreover, this order brings the law in consonance with the law settled by the SC and the High Courts across the country. It is pertinent to note that SC has been dealing with a lot of cases pertaining to the issues highlighted above i.e. effect of limitation, extension of limitation period and Acknowledgment of Debt, therefore, it will be interesting to watch as to how SC finally decides to settle these issues for once and for all.

## Jaypee Kensington Boulevard Apartments Welfare Association & Ors v. NBCC (India) Ltd & Ors

Judgment dated March 24, 2021 [Civil Appeal No. 3395 of 2020]

### Background facts

- The CIRP of Jaypee Infratech Ltd (**JIL**), the Corporate Debtor, was initiated on August 09, 2017 when the NCLT, Allahabad Bench admitted the petition filed by one of the Financial Creditors, IDBI Bank Limited, under Section 7 of the IBC.
- On appointment of the Interim Resolution Professional (**IRP**) invited claims in this CIRP, the treatment of homebuyers became a contentious issue, because they were treated only as ‘other creditors’, not at par with financial and operational creditors.
- During the CIRP of JIL, various parallel litigations arose during 2017 to 2019. Yet for the resolution of JIL, few Resolution Applicants submitted their Plans and finally the Resolution Plans submitted by two Resolution Applicants were put to vote before the Committee of Creditors (**CoC**). Finally, the Resolution Plan submitted by NBCC (India) Ltd was approved by the CoC on December 17, 2019, by an overwhelming majority of over 97% of voting share of the Financial Creditors.



- Subsequently on December 19, 2019, the Resolution Professional moved an Application before the NCLT, Allahabad Bench, for approval of the Resolution Plan in terms of Section 30(6) read with Sections 31 and 60(5) of the IBC.
- Vide order dated March 03, 2020, the NCLT approved the Resolution Plan with some modifications and certain directions while accepting some of the objections.
- The Successful Resolution Applicant, NBCC, preferred an Appeal against the order of the NCLT dated March 03, 2020. The NCLAT passed an interim order dated April 22, 2020 (**Impugned Order**) directing that the approved Resolution Plan may be implemented subject to the outcome of appeal but at the same time, also provided that Resolution Professional may constitute an Interim Monitoring Committee' comprising of the successful resolution applicant (**NBCC**) and three major institutional Financial Creditors, who were the members of CoC.
- Aggrieved by the Impugned Order, the NBCC filed an Appeal before the SC on the grounds of interference by the NCLAT and NCLT in the approval of the Resolution Plan.

### Issue at hand?

- What is the extent of, and limitations over, the powers and jurisdiction of the Adjudicating Authority while dealing with a Resolution Plan approved by the Committee of Creditors?

### Decision of the Court

- SC re-iterated the Contours of the jurisdiction of the NCLT in approving of Resolution Plan as defined in the decision of *K. Shashidhar*<sup>18</sup> and observed that limited enquiry to be done is in respect of whether the Resolution Plan provides:
  - The payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the Corporate Debtor.
  - The repayment of the debts of operational creditors in prescribed manner.
  - The management of the affairs of the Corporate Debtor.
  - The implementation and supervision of the Resolution Plan.
  - Does not contravene any of the provisions of the law for the time being in force.
  - Conforms to such other requirements as may be specified by the Board.
- Thereafter, the SC referred to the judgment given in the matter of *Essar Steel*<sup>19</sup> and *Maharashtra Seamless Ltd*<sup>20</sup> wherein the Apex Court observed that if the NCLT finds that the requisite parameters had not been complied with, it may send the Resolution Plan back to the CoC to resubmit the same after satisfying the parameters and there is no scope for the NCLT or the NCLAT to proceed on any equitable perception or to assess the Resolution Plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the Financial Creditors.
- Further, SC quite assertively discussed the extent of judicial interference or review in approval of a Resolution Plan and observed that in no uncertain terms, it can be interpreted that if the specified parameters have not been kept in view, the NCLT may send a Resolution Plan back to the Committee of Creditors to re-submit such plan after satisfying the parameters.
- SC yet again reinstated that the jurisdiction of the NCLT is also circumscribed by the limited grounds of appeal provided in Section 61 of the IBC. Within its limited jurisdiction, if the NCLT or the NCLAT finds any shortcoming in the Resolution Plan *vis-à-vis* the specified parameters, it can only send the Resolution Plan back to the CoC, for re-submission after satisfying the parameters delineated by the IBC and exposted by the Court. However, there is no scope for interference with the commercial aspects of the decision of the CoC by substituting any commercial term in the Resolution Plan approved by the CoC.
- Lastly in view of the precedents cited above, in order to do substantial and complete justice to the parties and in the interest of all the stakeholders, the SC exercised its plenary powers under Article 142 of the Constitution and granted another 45 days to the two Resolution Applicants to present a modified Resolution Plans. Further the Impugned Order passed by the NCLAT was also set aside for the reason that the NCLAT was not justified in providing for an Interim Monitoring Committee for implementation of the Resolution Plan in question during the pendency of appeals.

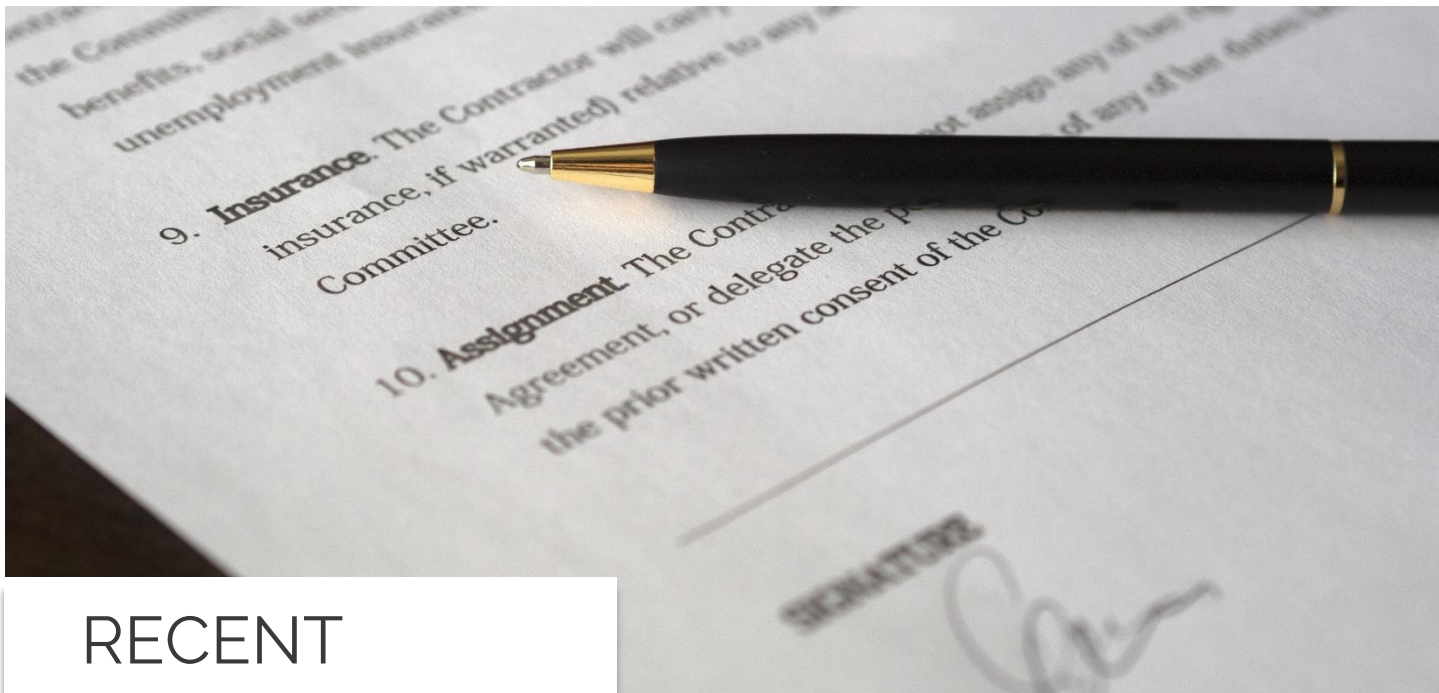
### Our viewpoint

In our opinion, this decision reinforces the parameters delineated by the SC in its various decisions regarding the powers and jurisdiction of the Adjudicating Authority in matter of approval of a Resolution Plan and yet again upholds that the Commercial wisdom of CoC is paramount.

<sup>18</sup> K. Shashidhar v. Indian Overseas Bank and Ors: (2019) 12 SCC 150

<sup>19</sup> CoC of Essar Steel India Ltd v. Satish Kumar Gupta & Ors: (2020) 8 SCC 531

<sup>20</sup> Maharashtra Seamless Ltd v. Padmanabhan Venkatesh & Ors: (2020) 11 SCC 467



## RECENT DEALS

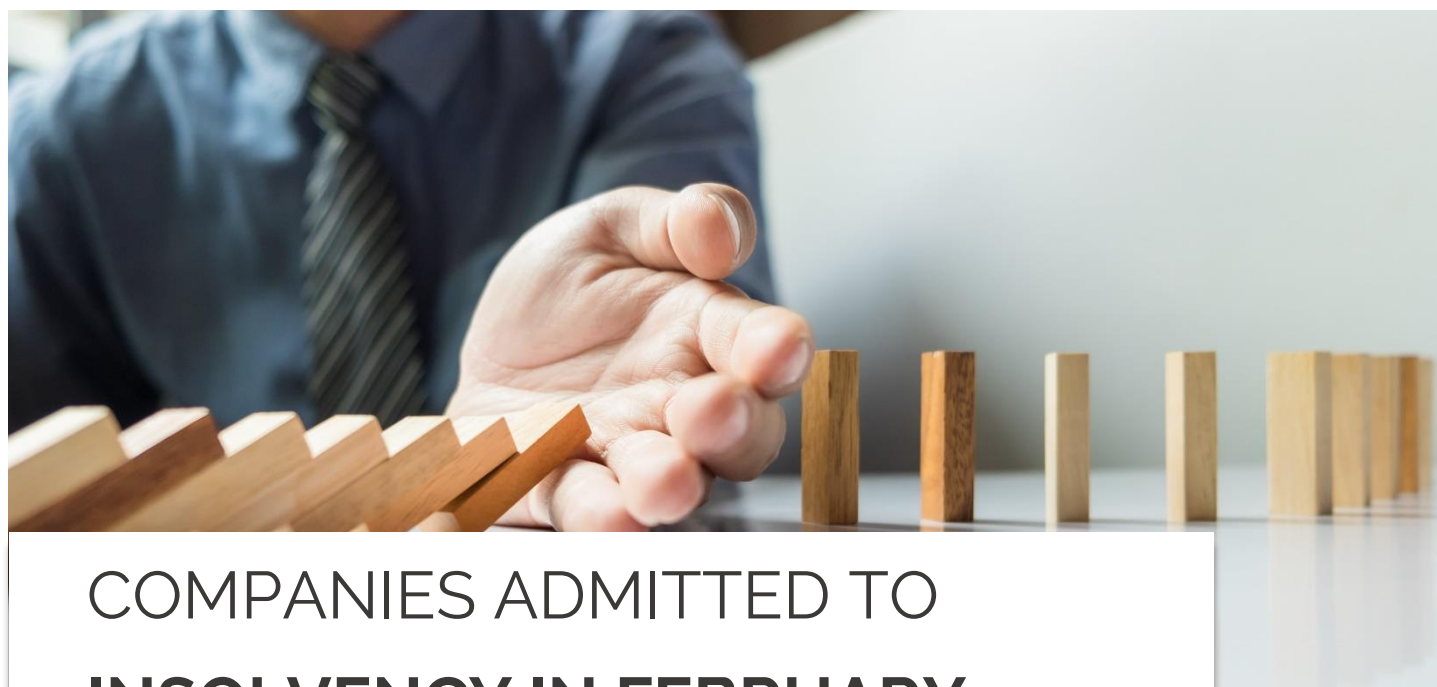
### NCLT, Hyderabad Bench gives nod to Resolution Plan submitted by Mikita Industries & Tech Services LLP for resolution of Panel Boards & Laminates Ltd

- Mr Pavan Kankani, the Resolution Professional of Panel Boards & Laminates Ltd (**Corporate Debtor**) placed the approved Resolution Plan of Mikita Industries & Tech Services LLP (**Successful Resolution Applicant**) before NCLT, Hyderabad for approval under Section 30(6) and Section 31(1) of IBC.
- The CIRP of the Corporate Debtor was initiated by the Hyderabad Bench by an order on 20.08.2019. Subsequently, a public announcement for the collation of claims in terms of Regulation 6(1) of the CIRP Regulations was made and the CoC of the Corporate Debtor was constituted.
- The Appointed Resolution Professional published the Form G inviting the Expression of Interest (**Eoi**). In response to the same, two Resolution Plans were received, one from Avaya Holdings & Trading Pvt Ltd and another from Mikata Industries & Tech Services LLP. In the 9<sup>th</sup> meeting of the CoC held on September 17, 2020, the Plan submitted by Mikata Industries & Tech Services LLP was deliberated upon and thereafter approved by a 100% majority.
- The Resolution Plan by Mikata Industries & Tech Services LLP provides for a total payment of INR 8.55 Crore against the admitted debt of INR 36.88 Crores. Out of this, a total of 5.13 Crores has been paid to the Financial Creditors against an admitted debt of INR 18.28 Crores and the Operational Creditors have been paid only INR 33,72,258 i.e., 2.5% of their admitted claim of INR 13,48,90,310.
- Observing that the Resolution Plan is in compliance with all mandatory requirements under Section 30(2) of the IBC and the Regulations 37, 38, 38 (1A) and 39 (4) of CIRP Regulations, the Tribunal approved the Resolution Plan vide order dated March 01, 2021.

## Successful Resolution of Uniworld Sugars Pvt Ltd

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- The NCLT, Allahabad Bench, vide an order dated March 17, 2021 approved the Resolution Plan submitted by NCIRCLE EXIM LLP (**NEL**), the Successful Resolution Applicant, in the CIRP of Uniworld Sugars Pvt Ltd (**Corporate Debtor**).
- Vide order dated May 29, 2018, the NCLT, Allahabad Bench admitted the Company Petition filed by the Operational Creditor, i.e., Ranasaria Poly Pack Pvt Ltd under Section 9 of the IBC and ordered for initiation of the CIRP of Uniworld Sugars Pvt Ltd.
- The Resolution Professional issued Form-G inviting EoIs from Prospective Resolution Applicants. However, as no Resolution Plans were submitted, the Resolution Professional of the Corporate Debtor filed an Application for Liquidation of the Corporate Debtor.
- In pursuance of the objective of the IBC, the NCLT dismissed the Application filed for Liquidation and further time to revive the Corporate Debtor and avoid liquidation. Pursuant to this, two Resolution Plans were received by the Resolution Professional and in the 21<sup>st</sup> meeting of the COC, the Resolution Plan of NEL was approved by 100% voting share.
- A perusal of the Resolution Plan by NEL provides for a total payment of INR 172.06 Crores, out of which the Financial Creditors shall be paid a sum of INR 43.73 Crores and the Operational Creditors including the workmen & employees are paid a total sum of INR 2 Crores.
- The Bench while approving the Plan vide order dated March 17, 2021 condoned the delay of more than 330 days and directed the Resolution Professional to act as the 'Monitoring Agency' to monitor and supervise the proper implementation of the approved Plan.



# COMPANIES ADMITTED TO INSOLVENCY IN FEBRUARY 2021

## Companies admitted to insolvency in the month of February 2021

| #  | Name of Corporate Debtor               | NCLT      | Industry   |
|----|--|-----------|--|
| 1  | WSH Pvt Ltd                            | Indore    | <b><u>Trading</u></b><br>A non-government company involved in trading business.  |
| 2  | CAPL Hotels & Spa Pvt Ltd              | New Delhi | <b><u>Hospitality</u></b><br>Primarily involved in the business of provision of short stay accommodation such as hotels, camping sites etc.  |
| 3  | Maxworth Infrastructures Pvt Ltd       | New Delhi | <b><u>Real Estate</u></b><br>Involved in buying, selling and renting of apartment building and dwellings, non-residential buildings etc.   |
| 4  | Lexcorp Advisory Services Pvt Ltd      | Mumbai    | <b><u>Services</u></b><br>Involved in the business of providing legal, accounting, book-keeping and auditing services, tax consultancy, market research and public opinion polling business, management consultancy etc. |
| 5  | Nandlal Kamal Kishore Vyapaar Pvt Ltd  | Kolkata   | <b><u>Trading</u></b><br>The company is involved in services of commission agents, commodity brokers, auctioneers and all other wholesalers who trade on behalf and on the account of others.                            |
| 6  | Maktel Control & Systems Pvt Ltd       | Ahmedabad | <b><u>Manufacturing</u></b><br>Involved in the business of manufacture of electrical equipment such as control and relay panels.   |
| 7  | Tierra Food India Pvt Ltd              | Kerala    | <b><u>FMCG</u></b><br>Involved in the business of production of food items / snack foods.  |
| 8  | Deltronix India Ltd                    | New Delhi | <b><u>Trading</u></b><br>Involved in the trading and wholesale business.   |
| 9  | Harish Textile Engineers Pvt Ltd       | Mumbai    | <b><u>Manufacturing</u></b><br>Manufacturing of textile processing, finishing machinery and equipment.   |
| 10 | Vashistha Mercantile & Trading Pvt Ltd | Mumbai    | <b><u>Trading</u></b><br>Involved in the trading business.   |

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| 11 | <b>Shakti Motors Automobiles Pvt Ltd</b>      | Mumbai    | <b><u>Automobile</u></b><br>Engaged in the business of automotive sales, servicing and repair work.  |
| 12 | <b>Surya Exim Ltd</b>                         | Ahmedabad | <b><u>Services</u></b><br>Operates in the marketing industry primarily pertaining to commodities like Non-Coking Coal, Polyester Yarn/Chips, Pet Resins, Polymers etc.   |
| 13 | <b>Apac Builders and Constructors Pvt Ltd</b> | New Delhi | <b><u>Construction</u></b><br>Engaged in the business of completion of infrastructure including activities that contribute to the completion of a construction.  |
| 14 | <b>Mercator Limited</b>                       | Mumbai    | <b><u>Shipping</u></b><br>Involved in the shipping business. The key products include Charter Hire and Dredger.  |
| 15 | <b>Space Realcon India Private Limited</b>    | Indore    | <b><u>Real Estate</u></b><br>Space Realcon India Pvt. Ltd. is involved in the real estate business including but not limited to buying, selling, and renting of real estate such as apartment building and dwellings, non-residential buildings etc. |
| 16 | <b>SKP Steel Industries Private Limited</b>   | Kolkata   | <b><u>Manufacturing</u></b><br>Involved in chemicals and products related to chemicals and metals.   |
| 17 | <b>Italtinto Equipment Pvt Ltd</b>            | Mumbai    | <b><u>Manufacturing</u></b><br>In business of designing, developing, manufacturing, and distribution of tinting and mixing equipment for paint and coatings industry.  |
| 18 | <b>Kanishkdeep Stock Consultants Pvt Ltd</b>  | Jaipur    | <b><u>Services</u></b><br>Provides financial consultancy services such as financial intermediation.  |
| 19 | <b>Mauktika Energy Pvt Ltd</b>                | Hyderabad | <b><u>Services</u></b><br>Operates in the social assistance industry which includes providing community, personal & social services.   |
| 20 | <b>Earth Water Ltd</b>                        | New Delhi | <b><u>Renewable</u></b><br>Provides solutions for wastewater management.   |
| 21 | <b>Oasis Marine Pvt Ltd</b>                   | Ahmedabad | <b><u>Fishing</u></b><br>Providing services for operation of fish hatcheries, fish farms and other activities incidental to fishing.   |
| 22 | <b>K-Mark Bizsol Pvt Ltd</b>                  | Ahmedabad | <b><u>Trading</u></b><br>Trading of vitrified tiles, wall tiles, flooring tiles etc.   |
| 23 | <b>Rudra Buildwell Constructions Pvt Ltd</b>  | New Delhi | <b><u>Real Estate</u></b><br>All activities related to real estate business.   |
| 24 | <b>Shivaji Cane Processors Ltd</b>            | Mumbai    | <b><u>Manufacturing</u></b><br>Manufacturing food products such as puro sugar, puro jaggery powder and sugarcane procurement.  |
| 25 | <b>Powai Cubicles Pvt Ltd</b>                 | Mumbai    | <b><u>Services</u></b><br>The company is involved in the business of providing legal, accounting, book-keeping, auditing and other such services.  |
| 26 | <b>Shri Lal Mahal Ltd</b>                     | New Delhi | <b><u>Export</u></b><br>Business of exporting food products such as Basmati and non-Basmati rice.  |
| 27 | <b>Kalyani Education Pvt Ltd</b>              | Mumbai    | <b><u>Services</u></b><br>The company provides community, personal & social services.  |
| 28 | <b>FCRD India Pvt Ltd</b>                     | New Delhi | <b><u>Trading</u></b><br>Involved in the trading business.   |
| 29 | <b>Artimpianti India Pvt Ltd</b>              | New Delhi | <b><u>Manufacturing</u></b><br>Manufacturing and trading of industrial equipment such as casting preparing equipment, aluminium furnaces etc.  |
| 30 | <b>Devesh Engineering Enterprises Ltd</b>     | Hyderabad | <b><u>Manufacturing</u></b><br>Manufacturing of paper and is also involved in the Print Media business which includes publishing, printing, and production of recorded media.  |



|    |   |            |  |
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| 31 | Doshi Holdings Pvt Ltd                          | Mumbai     | <u>Services</u><br>The company is engaged in the business of providing financial consultancy services.   |
| 32 | Thakkarsons Roll Forming Pvt Ltd                | Mumbai     | <u>Manufacturing</u><br>Business of manufacture and export of Iron and Steel based products including CRCA Coils, Sheets, Prefabricated Buildings, Solar Panels etc.                           |
| 33 | Leela Trade Steel and Commodities India Pvt Ltd | Mumbai     | <u>Manufacturing</u><br>Manufacturing of Iron & Steel.   |
| 34 | Indiglobal Tradelinks Pvt Ltd                   | New Delhi  | <u>Trading</u><br>Involved in trading business.  |
| 35 | Artedz Fabs Ltd                                 | Mumbai     | <u>Manufacturing</u><br>Operates in the textile industry and is primarily involved in manufacturing of cotton fabrics.   |
| 36 | Reward Business Solutions Pvt Ltd               | Mumbai     | <u>Services</u><br>Provides business operation solutions.  |
| 37 | Afcan Impex Pvt Ltd                             | Ahmedabad  | <u>Trading</u><br>Involved in the business of trading of bicycles.   |
| 38 | Dawar International Electronics Pvt Ltd         | Chandigarh | <u>Manufacturing</u><br>Involved in manufacturing of electronic equipment which includes manufacturing of electronic valves and tubes and other electronic components.                         |
| 39 | Harsh Specialty Coating Pvt Ltd                 | New Delhi  | <u>Manufacturing</u><br>Involved in the business of trading and manufacturing of metals & chemicals, and products thereof.   |
| 40 | McNally Sayaji Engineering Ltd                  | Kolkata    | <u>Manufacturing</u><br>Involved in the manufacturing of heavy machinery which includes equipment required for crushing, grinding, screening and feeding of iron ore, steel, zinc, copper etc. |
| 41 | Nice Projects Ltd                               | New Delhi  | <u>Construction</u><br>Engaged in construction activities and providing civil engineering services.  |

## Companies directed to be liquidated in the month of February 2021

| # | Name of Corporate Debtor                    | NCLT      | Industry   |
|---|---|-----------|--|
| 1 | M/s. Ascentis India Construction Pvt. Ltd.  | New Delhi | <u>Construction</u><br>Engaged in providing services such as project consultancy and structure engineering services.             |
| 2 | New Age Satellite Service Private Limited   | Kolkata   | <u>Trading</u><br>Primarily involved in the trading business.  |
| 3 | M/s. Bob Tech Solutions Private Limited     | Bengaluru | <u>Services</u><br>In business of providing IT services which includes services such as staffing solutions, product support etc. |
| 4 | Visa Drugs & Pharmaceutical Private Limited | Kolkata   | <u>Pharmaceuticals</u><br>Engaged in the pharmaceutical business, specifically manufacturing of medicines.                       |
| 5 | M/s. Micro Power Technology Private Limited | New Delhi | <u>Manufacturing</u><br>Involved in the manufacturing of products such as accumulators, primary cells, and primary batteries.    |
| 6 | Precon Private Limited                      | Ahmedabad | <u>Manufacturing</u><br>Manufacturing of RCC spun pipes, steel hump pipes, precast etc.  |

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| 7  | Jassum Propcon Projects Pvt Ltd        | New Delhi | <b><u>Construction</u></b><br>Involved in the construction and infrastructure development business.                                   |
| 8  | JMD Oils Pvt Ltd                       | New Delhi | <b><u>FMCG</u></b><br>Production of food products such as refined edible oil.   |
| 9  | Ablaze Info Solutions Pvt Ltd          | New Delhi | <b><u>Services</u></b><br>In the business of providing IT services like maintaining websites, creating multimedia presentations, etc. |
| 10 | Y M Foodways Pvt Ltd                   | New Delhi | <b><u>FMCG</u></b><br>Production of dairy products.   |
| 11 | Auto Friction Components India Pvt Ltd | Kochi     | <b><u>Automobiles</u></b><br>Involved in manufacturing parts and accessories for motor vehicles.                                      |
| 12 | Pioneer Globex Pvt Ltd                 | Ahmedabad | <b><u>Trading</u></b><br>Involved in the trading and wholesale business.  |
| 13 | Marmagoa Steels Ltd                    | Mumbai    | <b><u>Manufacturing</u></b><br>Involved in manufacturing of Iron & Steel.   |
| 14 | S.K. Masala and Foods Ltd              | Ahmedabad | <b><u>FMCG</u></b><br>Engaged in the business of packaged food and beverages.   |
| 15 | Royal Wood Pvt Ltd                     | New Delhi | <b><u>Manufacturing</u></b><br>Involved in the business of manufacturing, exporting, and supplying wood products.                     |
| 16 | VRG Digital Corporation Pvt Ltd        | Mumbai    | <b><u>Services</u></b><br>Involved in activities auxiliary to financial intermediation, except insurance and pension funding.         |
| 17 | Bala Techno Industries Ltd             | Kolkata   | <b><u>Manufacturing</u></b><br>Involved in manufacturing textile fabrics, elastic tapes etc.  |
| 18 | Rantandeep Infrastructure Pvt Ltd      | Allahabad | <b><u>Construction</u></b><br>Provides civil engineering services for construction projects.  |
| 19 | Prominent Metal Pvt Ltd                | New Delhi | <b><u>Trading</u></b><br>Involved in wholesale trade and commission trade, except of motor vehicles and motorcycles.                  |
| 20 | Jarvis Infratech Pvt Ltd               | New Delhi | <b><u>Manufacturing</u></b><br>Engaged in manufacturing of special-purpose machinery.   |
| 21 | SRK Devbuild Pvt Ltd Pvt Ltd           | Indore    | <b><u>Services</u></b><br>Engaged in construction activities and providing civil engineering services.                                |
| 22 | M/s Saka Ltd                           | New Delhi | <b><u>Manufacturing</u></b><br>Manufacturing monocolour television sets.  |
| 23 | Prabhat Resources Ltd                  | Chennai   | <b><u>Trading</u></b><br>Primarily involved in the trading business.  |
| 24 | Aastha Surgimed Ltd                    | New Delhi | <b><u>Manufacturing</u></b><br>Involved in manufacturing and trading of equipment used at hospitals.                                  |
| 25 | Sri Sai Sindhu Industries Ltd          | Hyderabad | <b><u>Manufacturing</u></b><br>Involved in manufacturing Iron and Steel.  |
| 26 | Misa Services Pvt Ltd                  | Mumbai    | <b><u>Services</u></b><br>Primarily involved in business of providing security services.  |

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|----|--|-----------|--|
| 27 | <b>Amrit Feeds Ltd</b>                       | Kolkata   | <b><u>Manufacturing</u></b><br>Involved in manufacturing and trading animal feeds.   |
| 28 | <b>Taurus Exports Pvt Ltd</b>                | Jaipur    | <b><u>Manufacturing</u></b><br>Operates in the textile industry and is in manufacturing of apparels.                                   |
| 29 | <b>Khati Design Pvt Ltd</b>                  | Jaipur    | <b><u>Manufacturing</u></b><br>Involved in business of manufacturing and exporting wooden furniture.                                   |
| 30 | <b>Alupan Composite Panels Pvt Ltd</b>       | New Delhi | <b><u>Manufacturing</u></b><br>Involved in manufacturing of standard aluminum composite panels.  |
| 31 | <b>Drupa Suppliers Pvt Ltd</b>               | Ahmedabad | <b><u>Services</u></b><br>Engaged in the business of financial intermediation.   |
| 32 | <b>Associated Appliances Ltd</b>             | New Delhi | <b><u>Manufacturing</u></b><br>Engaged in manufacturing of LPG gas stoves and home appliances.   |
| 33 | <b>Gran Electronics Pvt Ltd</b>              | Mumbai    | <b><u>Manufacturing</u></b><br>Engaged in manufacturing of products such as electronic valves, tubes, and other electronic components. |
| 34 | <b>Suwarnsparsh Gems &amp; Jewellery Ltd</b> | Mumbai    | <b><u>Manufacturing</u></b><br>Involved in the manufacturing of jewelry made out of gold, diamond, rubies, emeralds, platinum etc.     |

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