

Restructuring & Insolvency

Monthly Newsletter

September 2021

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STATUTORY UPDATES

Income-tax (24th Amendment) Rules, 2021

- In exercise of the powers conferred by Clause (c) and Clause (cd) of Section 140 and Clause (viii) of Sub-Section (2) of Section 288 read with Section 295 of the Income-tax Act, 1961 (43 of 1961), CBDT amended the existing Income-tax Rules, 1962 (**Principal Rules**).
- Rule 12AA is inserted to define 'any other person' in relation to verification of returns in terms of Section 140 of Income-tax Act. As per the said Rule, 'any other person' shall be the person, appointed by the Adjudicating Authority for discharging the duties and functions of an Interim Resolution Professional, a Resolution Professional or a Liquidator under the Insolvency and Bankruptcy Code, 2016.
- The amendment is also introduced by way of Regulation 51B whereby an 'Authorized Representative' for the purposes of Clause (viii) of Sub-Section (2) of Section 288, any other person, in respect of a company or a limited liability partnership, shall be the person appointed by the Adjudicating Authority for discharging the duties and functions of an Interim Resolution Professional, a Resolution Professional or a Liquidator.

The Insolvency and Bankruptcy Code (Amendment) Act, 2021

- The Insolvency and Bankruptcy Code (Amendment) Bill, 2021 as introduced by the Ministry of Finance before the Lok Sabha in July 2021. It received the assent of the President in August 2021. In view thereof, Amendment Bill, 2021 will now be recognized as the Insolvency and Bankruptcy Code (Amendment) Act, 2021 (**Amendment Act**).
- A brief history of the Amendment:
 - A proviso has been added to Section 4 of the IBC whereby a minimum threshold of not more than one crore rupees for initiating pre-packaged insolvency resolution process has been introduced.
 - Chapter III-A, containing Sections 54A to 54P dealing with pre-packaged insolvency resolution process for micro, small and medium enterprise, has been introduced. These are to be read with the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (**PPIRP Regulations**).
 - The provisions pertaining to penalty for fraudulent management of the Corporate Debtor during PPIRP and punishment for offences related to PPIRP has been introduced.



RECENT JUDGMENTS

Pratap Technocrats Pvt Ltd & Ors v. Monitoring Committee of Reliance Infratel Ltd & Anr

Civil Appeal No. 676 of 2021

Background facts

- The Corporate Insolvency Resolution Process (**CIRP**) of Reliance Infratel Ltd (**Corporate Debtor**), was initiated by an order dated May 15, 2018, of the NCLT. However, the same was challenged in an appeal, and the order of admission was stayed. On April 30, 2019, the National Company Law Appellate Tribunal (**NCLAT**) vacated the stay on the CIRP as the appeal was withdrawn. In view thereof, the CIRP of the Corporate Debtor resumed and the Resolution Professional (**RP**) collated the claims and formed the Committee of Creditors (**CoC**) of the Corporate Debtor.
- Thereafter, the RP invited Expressions of Interest from prospective Resolution Applicants. A total of fifteen Expressions of Interest were received, out of which only four Resolution Plans were received. After due deliberation, the Resolution Plan submitted by Reliance Digital Platform and Project Services Limited was approved by the CoC.
- The plan approved by the CoC was placed before the NCLT for approval in terms of Sections 30(6) and 31 of the IBC. The NCLT, vide order dated December 03, 2020 approved the Resolution Plan by Reliance Digital Platform and Project Services Ltd. The order by the NCLT approving the Resolution Plan was challenged by certain Operational Creditors before NCLAT on the following grounds:
 - The Appellants were kept unaware of the CIRP and no details were provided by the RP on the disposal of the fund towards their claims.
 - The claims of the Appellants had not received a fair and equitable treatment as the Appellants were made to suffer a reduction of 90% of their total claims.
- The NCLAT, vide judgment dated January 04, 2021 (**Impugned Order**), rejected the appeal by the Appellants stating that there was no substance in the grievance of the Operational Creditors that they have been unfairly or inequitably treated regarding the distribution of funds. The NCLAT held that equitable treatment can be claimed only by similarly situated creditors. Operational Creditors stand on a different footing as compared to Financial Creditors.
- Aggrieved by the Impugned Order, the Appellants filed an Appeal before the Supreme Court (**SC**)

Issue at hand?

- What is the ambit of the Adjudicating Authority to determine the amount that is payable to the Operational Creditors or the overall creditors of the Corporate Debtor under the Resolution Plan?

Decision of the Court

- Prior to deciding the present Appeal, SC addressed various contentions raised by the Appellants regarding the exclusion of value of certain assets in determining the Liquidation Value of the Corporate Debtor and its impact on the dispensation of the amounts to the creditors. After perusal of the factual circumstances and the arguments advanced based on these aspects, the attention of the Court was drawn towards jurisdiction of the Adjudicating Authority and the Appellate Tribunal in approving the Resolution Plan.
- SC revisited the provisions of the IBC pertaining to the approval of a Resolution Plan and believed the jurisdiction of the Adjudicating Authority under Section 31(1) is to determine whether the Resolution Plan, as approved by the CoC, complies with the requirements of Section 30(2). The NCLT is within its jurisdiction in approving a Resolution Plan which accords with the IBC. There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC.
- Thereafter, to further clarify the jurisdiction of the Adjudicating Authority for approval of a Resolution Plan, the Court reiterated the functions of the CoC in approving the Plan. It was stated that the approval of the Resolution Plan is a statutory function which is entrusted to the CoC, under Sub-Section (4) of Section 30 of the IBC. The CoC may approve a Resolution Plan with a voting percentage of not less 66% of the voting shares of Financial Creditors after considering: (i) its feasibility and viability; (ii) the manner of distribution proposed having regard to the order of priority amongst creditors laid down in Section 53(1) of the IBC, including priority and value of the security interest of the secured creditors; and (iii) such other requirements as may be specified by the IBBI.
- Once the above is done, the function of the Adjudicating Authority under Section 31 is limited to determining whether the Resolution Plan 'as approved by the CoC' under Section 30(4) meets the requirements under Section 30(2). This is a jurisdiction which is statutorily defined, recognized and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute.
- Thereafter SC perused Sections 61(3) and Section 30(2)(b) to determine the ambit of powers of the Appellate Tribunal and the scope of dispensation to an Operational Creditor in a Resolution Plan. Whereafter, the Court was of the view that the aforesaid provisions indicate that the ambit of the Adjudicating Authority is to determine whether the amount that is payable to the Operational Creditors under the Resolution Plan is consistent with the above norms which have been stipulated in Clause (b) of Sub-Clause (2) of Section 30 of the IBC.
- In furtherance to this, the Court emphasized on Explanation-1 to Clause (b) of Section 30, which is clarificatory in nature, and provides that a distribution which is in accordance with the provisions of the clause 'shall be fair and equitable' to such creditors. Fair and equitable treatment, in other words, is what is fair and equitable between the Operational Creditors as a class, and not between different classes of creditors. Since the Appellants are challenging the treatment of Operational Creditors on the ground that it has not been fair and equitable, the entitlement of the Operational Creditors defined by Sub-Clause (b) of Sub-Section (2) of Section 30, the clarification contained in Explanation-1 must apply.
- Lastly, SC referred to the law settled in *K. Sashidhar v. India Overseas Bank*¹, wherein it was held that the Adjudicating Authority is circumscribed by Section 31 to scrutinizing the Resolution Plan as approved by the CoC under Section 30(4). Similarly, the Court noted that the jurisdiction of the Appellate Authority to entertain an appeal against an approved Resolution Plan is defined by Sub-Section (3) of Section 61.
- In view of the abovementioned sections and the settled law, SC observed that the consistent principle of law which has been laid down is that neither the Adjudicating Authority nor the Appellate Authority can enter the commercial wisdom underlying the approval granted by the CoC to the Resolution Plan, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment. Hence, to argue that a residuary jurisdiction must be exercised to alter the delicate economic coordination that is envisaged by the statute would do violence on its purpose, and would be an impermissible exercise of the Adjudicating Authority's power of judicial review.

Therefore, the present appeal was dismissed on the ground that the requirements of the statute have been duly fulfilled and the decisions of the Adjudicating Authority and the Appellate Authority were in conformity with law.

Our viewpoint

By way of the said decision, just like the previous decisions, SC has defined the contours of the power of the Adjudicating Authority and the Appellate Authority. The decision of the CoC has again been given the supreme importance with the Apex Court emphasizing upon the 'Commercial wisdom of the CoC'. However, the judgment raises some concerns regarding the arbitrariness that may be followed in approving a Resolution Plan. Although, such independence to the CoC gives confidence to the Financial Creditors, however, to ensure that no arbitrary decision is taken by the CoC, it is important to define a structure that the CoC should abide by while approving a Resolution Plan.

To remedy this, the policy makers are now in a process to introduce a 'Code of Conduct for the CoC'. It would be interesting to watch as to how such code would align with the independence given to the CoC under the IBC and upheld by the SC in almost every matter dealing with this conflict.

¹ (2019) 12 SCC 150

The Central Board of Trustees, EPF v. The Liquidator (Sri. Gorur Narasimhamurthy Venkataraman) of M/s Bunt Solar India Pvt Ltd

Company Appeal (AT) (CH) (INS) No. 10 of 2021

Background facts

- M/s Bunt Solar India Pvt Ltd (**Corporate Debtor**) was undergoing Corporate Insolvency Resolution Process. However, by an order of the Adjudicating Authority, the Liquidation Process against the Corporate Debtor was initiated. In pursuance thereto, the Central Board of Trustees (**Appellant**), submitted a claim in the prescribed Form 'F'. Thereafter, vide order dated January 6, 2021 (**Impugned Order**), an order of dissolution of the Corporate Debtor was passed by the Adjudicating Authority.
- Allegedly, since the claims of the Appellant were not acknowledged by the Respondent and the Claims of the Appellant were completely waived off through the Impugned Order, the Appellant filed an Appeal before the National Company Law Appellate Tribunal, Chennai Bench.
- The Appellant argued that said action is clearly in violation of Section 11 of the Employees Provident Fund Act (**EPF Act**) and in violation of Section 36(4)(a) (iii) of the IBC, wherefrom the provisions clearly state that the Provident Fund dues are outside Liquidation Estate. It was further argued that the Waterfall Mechanism contained in Section 53 of the IBC will not be applicable, and as per Section 36(4)(a)(iii) of the Code, the EPF dues are outside the Liquidation Estate. Hence, these ought to have been paid on priority basis.

Issue at hand?

- Can a Liquidation Estate include the sums due to any workmen or employee from the Provident Fund?

Decision of the Tribunal

- The Tribunal reiterated Section 36(4)(a) of the IBC, which provide an exception to the Liquidation Assets and held that that a liquidation estate does not include the sums due to any workman or employee from the Provident Fund. However, given the facts of the present case, the Corporate Debtor value was nil and there was no other asset of the Corporate Debtor. Therefore, there being no source to pay the EPF and due to the dissolution order, the company was no more in existence in the eyes of law. In view thereof, the Tribunal held that since there is no company in existence, no directions can be passed even though such EPF and other employee dues fell outside the purview of the Liquidation Estate of the Corporate Debtor.

Our viewpoint

This is an important decision regarding the rights of the workmen and employees over their PF dues. The IBC itself states that the same cannot be considered as part of the Liquidation Estate to pay off the creditors of the Corporate Debtor. While the present judgment reiterates this settled provision, however, no remedy could be provided to the Appellants in the present case since the Debtor was left with no amount within its account.

Mohan Gems & Jewels Pvt Ltd v. Vijay Verma & Anr

Company Appeal (AT) (Insolvency) No. 849 of 2020

Background facts

- The Appeal has been filed against the order dated September 16, 2020, by the NCLT, Principal Bench, whereby the NCLT dismissed the application filed by the Liquidator of Mohan Gems & Jewels Pvt Ltd (**Corporate Debtor**) seeking for closure of the Liquidation Process as per Regulation 45(3)(a) of IBBI Liquidation Process Regulations, 2016 'Liquidation Regulations' and selling the Corporate Debtor as a going concern.
- The NCLT while dismissing the Application for sale of the Corporate Debtor as a going concern held that although the Liquidation Regulations allow the sale of the Corporate Debtor as a 'going concern', however, the same is inconsistent with Section 54 of the IBC. Therefore, the NCLT held that 'Insolvency and Bankruptcy Code is an embodiment of substantial rights laced with procedural mandates. When procedure itself is part of the enactment, the Regulation Authority cannot rewrite the procedure obliterating the provisions of IBC. Yes, the Regulation authority may bring in subordinate procedure for implementation of the sections of the Code. What could be liquidated is the assets of the debtor company, this concept of liquidation of assets shall not be construed as inclusion of sale of the company'.

Issues at hand?

- Whether the Liquidator is authorized to sell the Corporate Debtor as a going concern pursuant to Regulation 32 of IBBI (**Liquidation Process**) Regulations, 2016?
- Whether NCLT was correct in concluding that Regulations 39C of CIRP Regulations and 32A, 45(3) of the Liquidation Process Regulations are inconsistent with Section 54 of the IBC?

- Whether the interpretation by the Adjudicating Authority of the provisions of the IBC and Liquidation Process Regulations in the Impugned Order is contrary to the scope and spirit of the IBC?

Decision of the Tribunal

- While construing and/or interpreting any statutory provision, the SC has applied the rules of interpretation and held that one must investigate the legislative intent of the statute. The Apex Court observed that the intention of the statute must be found in the words used by the legislature itself. In case of doubt, it is always safe to observe the object and purpose of the statute. Hence, when a question arises as to the meaning of a certain provision in a statute, the provision must be read in its context.
- The Tribunal after taking note of the arguments advanced on behalf of the Liquidator, the Successful Bidder and the IBBI, recalled the basic aim of the IBC and observed that the IBC is an economically beneficial legislation which aims to put the Corporate Debtor back on its feet by maximizing the value of assets of the Corporate Debtor.
- Thereafter, the Tribunal shed light upon the Discussion Paper dated January 30, 2019, released by the IBBI. This paper discussed the practical aspects of sale of the Corporate Debtor as a going concern and the arrangement arrived at in terms of Section 230 of the Companies Act.
- While dealing with the concerns raised by the NCLT in the Impugned Order pertaining to the Regulations overriding the objectives of the IBC, the Appellate Tribunal reiterated Section 240(1) of the IBC that embodies IBBI with the power to frame regulations, provided that the Regulations are consistent with the provisions of the IBC and must be to carry out the provisions of the IBC.
- The Tribunal then referred to the decisions of SC in M/s. Innoventive Industries Ltd v. ICICI Bank and Anr², and Swiss Ribbons Pvt Ltd & Anr v. Union of India & Ors³, and was of the opinion that Liquidation should be the last resort only if the Resolution Plan submitted is not up to the mark – if there is a Resolution Applicant who can continue to run the Corporate Debtor as a going concern, every plausible effort must be made to ensure the same.
- Even for Liquidation, the NCLAT referred to Regulation 39C of CIRP Regulations read with Regulations 32, 32A and 45(3) of Liquidation Process Regulations and observed that these Regulations were inserted with an agenda to facilitate/strengthen the objectives of the IBC. Hence, having regard to the fact that the IBC does not prevent the closure of Liquidation Process in the instance the Corporate Debtor is sold as a going concern pursuant to Regulation 32(e) following a closure report filed under Regulation 45(3)(a) of the Liquidation Process Regulations, it would be contradictory to observe that closure of Liquidation Proceedings cannot be done and only dissolution is provided for under the IBC. Hence, the Tribunal allowed the Appeal stating that the Liquidator can sell the business of the Corporate Debtor as a going concern.
- Regarding the issue of the jurisdiction of the NCLT or the NCLAT in adjudicating upon legality and propriety of any Regulation/Notification/Rules/Act, the NCLAT cited the decision of SC and observed that the legality and propriety of any Regulation/Notification/Rules/Act cannot be noticed by NCLT or NCLAT. The Tribunal can only ascertain whether the procedures provided for under the IBC/Companies Act, 2013 are being followed or not and cannot go beyond this.

Our viewpoint

This decision of the NCLAT broadens the scope of the resolution of the Corporate Debtor even if it is undergoing liquidation. From a bird's eye perspective, the same can be seen as 'second opportunity' for the investors as well as the Corporate Debtor in achieving mutually beneficial results. Moving forward, relying on this decision of the NCLAT, various Corporate Debtor may now be kept as a going concern instead of being completely wiped out by way of dissolution. In our view, this is another step towards promoting the progressive objectives of the IBC.

Mr. Nitin Chandrakant Naik & Anr v. Sanidhya Industries LLP

Company Appeal (AT) (Insolvency) No. 257 of 2020

Background facts

- Simrut Foods & Hospitality Pvt Ltd (**Corporate Debtor**) was undergoing insolvency proceedings. During the CIRP, a Resolution Plan by Sanidhya Industries LLP was approved by the CoC of the Corporate Debtor. Accordingly, the Resolution Professional of the Corporate Debtor filed an application under Section 30(6) and Section 31 of the IBC for the approval of the Resolution Plan by the Adjudicating Authority.
- The said Application was approved by the Adjudicating Authority vide order dated November 13, 2019 (**Impugned Order**).
- Aggrieved by the approval of the Resolution Plan, the Appellants, being the Promoter and Suspended Directors of the Corporate Debtor, filed an Appeal before the NCLAT, mainly on the ground that the Resolution Plan has provision to transfer personal properties of the Appellants who had given their personal properties as security in favor of the Corporate Debtor. The Appellants contended that the personal properties of the Shareholders/ Directors cannot form part of the

² (2018) 1 SCC 407

³ (2019) 4 SCC 17

Resolution Plan under Regulation 37 of the CIRP Regulations. Resolution Plan must be with respect to the property of the Corporate Debtor and cannot enforce action against the properties of Shareholders/ Directors or Guarantors without proceeding against them.

- The Appellants also contended that Resolution Plan was approved prior to the enforcement of Part-III i.e. insolvency proceedings against Corporate Debtors under the IBC. Hence, the disputes are to be dealt with the law that stood prior to the enforcement of Part-III of the IBC.
- On the contrary, the Respondents argued that the Adjudicating Authority and the Appellate Tribunal have limited judicial review available regarding the commercial decision taken by the CoC.

Issues at hand?

- Can the personal assets of the Personal Guarantor be attached in the Resolution Plan for the Corporate Debtor?

Decision of the Tribunal

- NCLAT allowed the present appeal by stating that the Resolution Plan as approved by the Adjudicating Authority was in contravention of the provisions of law that stood enforced prior to enforcement of Part-III of the IBC and that by approving the plan, the Adjudicating Authority acted beyond the scope of the powers vested with it.
- While arriving at the said decision, the Tribunal, reiterated the observations made by SC in *State Bank of India v. V. Ramakrishnan & Anr.*⁴, wherein the scope of filing proceedings against a personal guarantor was discussed. Accordingly, the Tribunal observed that since Part-III of the IBC was not notified at the time when the Resolution Plan for the Corporate Debtor was approved, the provisions of Presidency Towns Insolvency Act, 1909; the Provincial Insolvency Act, 1920; and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 were applicable to proceed against the personal guarantors.
- The NCLAT perused through Sections 14 and 31 of the IBC and observed that although Section 31 does not absolve the personal guarantor from liability embodied upon it, however, the liability of these guarantor cannot be waived off by simply including the properties/assets of the personal guarantor in the Resolution Plan. Had this been so, there would be no need of Part-III of the IBC and matters could be disposed by directing the guarantor to sign a transfer deed.
- Lastly, the Tribunal observed that Part-III of the IBC was not in force during the approval of the Resolution Plan. Financial Creditor could have resorted to the then existing provision relating to right of Financial Creditor to proceed against personal guarantor but could not have proceeded against the personal guarantor by including their properties in the Resolution Plan.

Our viewpoint

In our opinion, this judgment has simply clarified the situation pertaining to initiation of proceedings against the personal guarantors of the Corporate Debtor before and after the introduction of the Part III of the IBC, while upholding the liability that falls upon the personal guarantor of the Corporate Debtor in case of default by the borrower.

UoI v. Videocon Industries Ltd

Company Petition No. (IB) - 288/MB/2021

Background facts

- The CIRP of Videocon Industries, inclusive of 13 group entities, was initiated by a consolidated admission order dated August 08, 2019, passed by NCLT, Mumbai Bench in the petition filed by SBI under Section 7 of the IBC. Pursuant to this, the Resolution Plan submitted by Twin Star Technologies was approved by the NCLT vide order June 08, 2021.
- However, since the plan by the NCLT was not welcomed by various creditors, especially the dissenting creditors, appeals were filed before the NCLAT. Upon hearing the submissions made by the parties, the NCLAT Bench, raised concerns regarding the major haircut being borne by the creditors and the waiver being granted to the Successful Resolution Applicant. Consequently, the two-member bench of NCLAT passed a stay order on the implementation of the Resolution Plan by Twin Star and directed to maintain status quo ante on the operations of the Corporate Debtor till the next date of hearing. The stay order passed by the NCLAT was upheld by SC.
- The stay orders passed by the NCLAT and the SC were followed by the present Application filed by UoI, Ministry of Corporate Affairs through the Joint Director (**the Petitioner**), under Section 241-242, read with other relevant provisions of the Companies Act, 2013. By way of the present Application, the Petitioner sought for disclosure of the moveable and immovable properties/assets, including bank accounts, owned by the promoters and the KMPs of Videocon Industries (**Respondents**). It was also sought to allow freezing and restrain on alienation of such assets upon receiving the information of the assets.

⁴ (2018) 17 SCC 394

- The Petitioner relied upon the report procured from the Transaction Auditor basis which even the Resolution Professional of Videocon Industries filed an Application under 43 and 66 of the IBC. It was alleged that the Corporate Debtor and other connected declared group entities did not come clean, which goes to show prima facie that Respondents were directly involved in the objectionable transactions regarding the affairs of the Corporate Debtor.
- On the contrary, it was contended on behalf of the Respondents that the present petition is non maintainable altogether due to the operation of Sections 14 and 238 of the IBC. It was stated that since the Resolution Plan for the Corporate Debtor was under the stay order by the NCLAT, hence, the CIRP of the Corporate Debtor was an ongoing process. By virtue of the said explanation, it was contended that the present Application could not be filed by the Petitioner under the provisions of the Companies Act, 2013.

Issues at hand?

- Is the present Application maintainable and can the reliefs sought by the Petitioner be granted?

Decision of the Tribunal

- The NCLT, while upholding the maintainability of the present application and allowing the reliefs sought by the Petitioners against the promoters and the KMPs, gave the following reasons against the arguments advanced pertaining to the operation of Sections 14 and 238 of the IBC:
 - The NCLT believed Section 241 of the Companies Act is very clear and states that in the event the Central Government is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Adjudicating Authority for an order under this provision. Thus, provisions of Section 241(2)(m) of the Act are independent of the operation of the provisions of the IBC.
 - Further, the NCLT stated that since the words used regarding the status of the company are ‘the affairs are being conducted’, it can be construed that the company is alive, and the present actions are covered within the scope of Section 241(2) of the Act. The Tribunal explained that the use of words ‘are being conducted’, does not mean it does not cover past acts. It is to be interpreted that the acts so mentioned in the above proviso also indicates past acts of mismanagement, the present acts of mismanagement and to contain the future acts, especially when it comes to dealing with fraudulent transactions. In this present case, the company is still in operation under the control of Resolution Professional and hence all the acts so mentioned are not just past continuous but also present perfect continuous.
 - The NCLT was of the view that the moratorium under Section 14 is operational in favor of the Corporate Debtor. However, the present case is not a proceeding against the Corporate Debtor but for the Corporate Debtor. The efforts made by the Petitioner is to secure the assets back to the ultimate victims of fraud and it is not any adversarial proceeding that is the proceeding in rem which has initiated by the government to catch hold all the wrong doers and the fraudulent persons.
 - Adding further to the above analysis, the NCLT stated that the Petitioner had made a very categorical submission that they have not sought any relief against any of the Corporate Debtors. Also, since the Resolution Plan that was approved has now been stayed, there is no Resolution Plan and the Resolution Professional’s position is restored. In view thereof, it is to be considered that the CIRP process is still on, and it means that the company operations would continue under the control of Resolution Professional.
- In view of the above, the NCLT directed the Indian Banks Association (**IBA**) to facilitate disclosure of the details of the bank accounts and lockers owned by the Videocon promoters and ordered that such bank accounts and lockers also be frozen with immediate effect.

Our viewpoint

In our opinion, while this instance may prima facie seem to be in the best interest of the creditors, however this decision can be a dangerous precedent and can potentially delay the resolution of the Corporate Debtor when the NCLAT vacates the stay order on the implementation of the Resolution Plan. This decision may potentially prolong the CIRP which has already been involved in extensive litigation.



RECENT DEALS

Resolution of EPower Energy India Pvt Ltd

- The NCLT, Hyderabad Bench, vide an order dated August 05, 2021, approved the Resolution Plan submitted by Progressive Power Solutions LLP, the Successful Resolution Applicant, in the CIRP of EPower Energy (India) Pvt Ltd, the Corporate Debtor.
- Vide order dated July 12, 2019, the NCLT, Kolkata Bench admitted the Company Petition filed by the Financial Creditor, i.e., Keshan Trading Corporation under Section 9 of the IBC and ordered for initiation of the CIRP of EPower Energy (India) Pvt Ltd.
- The Resolution Professional [Issued](#) Form-G inviting Eols from Prospective Resolution Applicants. Pursuant to the public announcement, Resolution Plan was received only from the Successful Resolution Applicant. After rounds of deliberations, the Committee of Creditors (CoC) in its 9th meeting held on February 13, 2020, approved the revised Resolution Plan submitted by Indo Progressive Power Solutions LLP by 97.5% voting share.
- The Resolution Plan by Progressive Power Solutions LLP provides for a total payment of INR 15.69 crore against an admitted debt of INR 34.49 crore. A perusal of the same suggests that the creditors will have to take a haircut of approximately 46%.
- Pertinently, the Successful Resolution Applicant is an Unsecured Financial Creditor of the Corporate Debtor and will continue to stay as an Unsecured Financial Creditor in exchange for holding equity shares of the Corporate Debtor to the tune of INR 4,82,88,080 and an upfront cash payment of INR 1,24,29,126.

The NCLT, while approving this plan, stated that any concessions or waivers claimed by Progressive Power Solutions LLP regarding any statutory dues or penalty shall only be granted after the competent authority of Government/Semi Government/ central or Local Authority has approved such relief/ claim or waiver.

Resolution of Samyu Glass Pvt. Ltd

- The NCLT, Hyderabad Bench, vide an order dated August 13, 2021, approved the Resolution Plan submitted by M/s Renganayaki Agencies, the Successful Resolution Applicant, in the CIRP of Samyu Glass Pvt Ltd (**Corporate Debtor**).
- Vide order dated October 18, 2019, the NCLT, Hyderabad Bench admitted the Company Petition for initiation of the CIRP of the Corporate Debtor.

- The Resolution Professional issued Form-G inviting EoIs from Prospective Resolution Applicants. A total of 3 EoIs and 2 Resolution Plans were received and, the Resolution Plan of M/s Renganayaki Agencies was approved by 100% voting share.
- A perusal of the Resolution Plan by NEL provides for a total payment of INR 34.36 crore, out of which the Financial Creditors shall be paid a sum of INR 34.31 crore and the operational creditors including the workmen & employees are paid a total sum of INR 0.45 crore.
- The existing equity shares shall stand cancelled upon the approval of the Resolution Plan and fresh 15,80,10,054 equity shares shall be issued having INR 1 each, which shall constitute 100% paid up equity share capital post restructuring of equity under Resolution Plan.



COMPANIES ADMITTED TO INSOLVENCY IN AUGUST 2021

Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Windals Auto Pvt Ltd	Mumbai	<u>Automobile</u> Manufacturer of machined components for commercial/passenger vehicles
2	Sai Estate Consultants Chembur Pvt Ltd	Mumbai	<u>Real Estate</u> Involved in providing real estate services
3	Intelligent Textile Engineers Pvt Ltd	Ahmedabad	<u>Textile</u> Occupied in manufacturing of machinery for textile printing industry
4	Dolphin Marine Foods and Processors (India) Pvt Ltd	Mumbai	<u>Food Processing</u> Engaged in marine and food processing
5	Seya Industries Ltd	Mumbai	<u>Chemicals</u> Involved in manufacturing and export of pigment, pharmaceuticals, agrochemicals, and rubber chemicals
6	Opal Luxury Time Products Ltd	Mumbai	<u>Retail</u> Involved in manufacturing and marketing of high-end designer clocks
7	Shridhar Steels Pvt Ltd	Mumbai	<u>Steel</u> Involved in manufacturing and trading of valves and castings
8	Primuss Pipes & Tubes Ltd	Allahabad	<u>Steel</u> Involved in manufacturing of steel products
9	Neel Motors LLP	Mumbai	<u>Auto-Dealership</u> Holds automobile dealership of Hyundai Motor India Limited in India
10	Nexus feeds Ltd	Hyderabad	<u>Aquaculture</u> Engaged in the business of manufacturing fish feeds
11	Bartronics Global Solutions Ltd	Hyderabad	<u>IT</u> Involved in providing IT solutions pertaining to enterprise application integration, enterprise portal service, application development & management

12	Vijaygroup Realty LLP	Mumbai	<u>Real Estate</u> Engaged in the business of construction
13	Pentacle Infrastructures and Towers Pvt Ltd	Hyderabad	<u>Real Estate</u> Engaged in construction activities and provides civil engineering services
14	Nirmal Lifestyle Ltd	Mumbai	<u>Real Estate</u> Involved in development of real estate
15	You Seung Sang Sa India Construction Pvt Ltd	Chennai	<u>Real Estate</u> Involved in construction
16	Spacex Furniture Pvt Ltd	Chennai	<u>Furniture</u> Involved in manufacturing, exporting, and wholesaling of furniture
17	Star Trace Pvt Ltd	Chennai	<u>Equipment</u> Involved in manufacturing and export of magnetic and vibrating equipment, and metal detectors
18	Kasata Hometech (I) Pvt Ltd	Mumbai	<u>Real Estate</u> Engaged in construction
19	Ammanarul Spinners Pvt Ltd	Mumbai	<u>Textile</u> Involved in manufacturing of textile
20	Green Valleys Shelters Pvt Ltd	Chennai	<u>Real Estate</u> The company is involved in the real estate business, including buying, selling, and renting of apartment
21	Avantha Power & Infrastructure Ltd	Ahmedabad	<u>Power</u> Involved in selling of power procured from the operation of various power generation companies.
22	Giridharilal Sugar and Allied Industries Ltd	Ahmedabad	<u>Sugar</u> Involved in manufacturing of crystal sugar used for domestic purpose.
23	Nagaur Water Supply Company Pvt Ltd	Ahmedabad	<u>Water Treatment</u> Engaged in the business of collection, purification, and distribution of water
24	Monarch Multilayers Pvt Ltd	Mumbai	<u>Textile</u> Engaged in the processing of polyester yarn

Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Greenline Builders Ltd	New Delhi	<u>Real Estate</u> Involved in real estate development
2	Antal Infotech Pvt Ltd	Bengaluru	<u>IT</u> Involved in providing services pertaining to SMAC staffing.
3	Ind-Bharath Power Gencom Ltd	Hyderabad	<u>Power</u> Involved in development of power projects, based on variety of fuels
4	Kanakadhara Ventures Pvt Ltd	Hyderabad	<u>Real Estate</u> Involved in construction and civil engineering services
5	Siva Industries and Holdings Ltd	Hyderabad	<u>Conglomerate</u> Operates in diverse sectors such as communication, renewable energy, media, realty, agriculture, and food & wellness
6	A.K. Power Industries Pvt Ltd Co	Kolkata	<u>Hardware & Electrical</u> Engaged in manufacturing and export of electricals overhead equipment and hardware fittings.
7	Wave Global Educational Service Pvt Ltd	Allahabad	<u>Education</u> Involved in providing education services

8	Raipur Polymers Pvt Ltd	Cuttack	<u>Plastic</u> Engaged in manufacturer of PP woven bags
9	Nova Steels (I) Ltd	Cuttack	<u>Steel</u> Involved in trading in prestressed concrete strands, structural & re-enforcements steel, pipes, and tubes.
10	J.B. India Pvt Ltd	Cuttack	<u>Industrial Elevator</u> Involved in manufacturing of Industrial Elevators
11	Ruk Maa Real Estate Pvt Ltd	Cuttack	<u>Real Estate</u> Involved in buying, selling, and renting apartments
12	Orient Tourism Pvt Ltd	Mumbai	<u>Tour & Travel</u> Travel agency offering services like booking flights, online hotel reservations, holidays & package tours, and car rentals
13	Emerald Mineral Exim Pvt Ltd	Cuttack	<u>Iron</u> Involved in mining and beneficiating of iron ores
14	Neo Corp Intl Ltd	Cuttack	<u>Textile</u> Involved in manufacturing of technical textile
15	Renaissance Softlabs Pvt Ltd	Hyderabad	<u>Iron</u> Involved in manufacturing of iron
16	Lanco Solar Pvt Ltd	Hyderabad	<u>Projects, Infrastructure & Energy</u> The company commercializes alternate technologies for green and efficient energy generation systems
17	Madhusala Drinks Pvt Ltd	Kolkata	<u>Liquor</u> Involved in manufacturing of alcoholic liquors by distillation
18	Tag Info Solutions India Pvt Ltd	Chennai	<u>IT</u> Involved in business of software development

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