

Restructuring & Insolvency

Monthly Newsletter

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STATUTORY UPDATES

Filing of list of creditors under Clause (ca) of Sub-Regulation (2) of Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

- The Insolvency and Bankruptcy Board of India (IBBI) in pursuance of Clause (ca) of Sub-Regulation (2) of Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**), had issued a Circular dated November 27, 2020 directing the Insolvency Professionals to file the list of creditors and modifications thereof in the stipulated format on IBBI's website.
- In the said format, a particular column for 'Identification No.' was mentioned which sought the identification details of the creditors. In a few instances, sensitive personal information such as Aadhar Number, PAN Card, etc. were being filled in.
- Therefore, in order to ensure privacy and to prevent the circulation of the confidential information of any particular creditor, the IBBI vide Circular dated November 24, 2021 issued a new format to file the list of creditors. The new format removes the requirement of mentioning the 'Identification No.' while keeping the rest of the contents of the earlier format same.
- The said Circular also directs the Insolvency Professionals to file the list of creditors of the respective Corporate Debtor and modification thereof, in the revised format, within three days of the preparation of the list or modification thereof, as the case may be.
- A similar amendment vide another circular dated November 24, 2021 has also been introduced in the filing and modification of the list of stakeholders in the Liquidation Process of a Corporate Debtor. The amendment has been brought in the pursuance of clause (d) of Sub-Regulation (5) of Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations**) requiring the Liquidator to file list of stakeholders on the electronic platform of the IBBI for dissemination on its website.
- This amendment has been brought about keeping in mind the fundamental right to privacy of every individual.

Guidelines for Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Second Recommendation)

- The Insolvency and Bankruptcy Board of India (IBBI) on December 1, 2021 issued the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendations) (Second) Guidelines, 2021' (**the Guidelines**), in furtherance to the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustee (Recommendations) Guidelines, 2021', which listed out certain criteria basis which a Insolvency Professional may be included in the Panel of IPs and thereafter appointed by the Adjudicating Authority.

- Keeping in mind the basic objective of the IBC i.e., timely resolution of the Corporate Debtor, these Guidelines seek to reduce the time involved in the appointment of Insolvency Professional as an Interim Resolution Professional, Resolution Professional, Liquidator and Bankruptcy Trustee in an ongoing Resolution or Liquidation Process, as the case may be.
- At the time of reference/directions received from the NCLT, the IBBI does not have prior information about the volume, nature and complexity of an insolvency or bankruptcy process and the resources available at the disposal of an Insolvency Professional. In such a situation, the IBBI is unlikely to add much value by recommending an Insolvency Professional for the process. Further, the time required for the final appointment of the Insolvency Professional may turn out to be a lengthy and time-consuming process. Hence, to avoid administrative delays in appointment of the Insolvency Professional, by way of these Guidelines, the IBBI has recommend that a panel of Insolvency Professionals be made for the purpose of section 16(4), 34(6), 97(4), 98(3), 125(4), 146(3) and 147(3) of the IBC.
- For the formation of the Panel, the Guidelines require mentioning of the following parameters:
 - The Panel will have Zone wise list of IPs based on the registered office (address as registered with the Board) of the IP
 - Each Panel will have a validity of 6 months after which a new Panel will replace it
 - Any name from the Panel may be picked by the NCLT for the appointment of IRP, Liquidator, RP or BT for the CIRP, Liquidation Process, Insolvency Resolution or Bankruptcy Process relating to corporate debtors and their personal guarantors
 - The DRT may pick up any name from the Panel for appointment as RP or BT, for an Insolvency Resolution or Bankruptcy Process for personal guarantors to corporate debtors, as the case may be
- The eligibility criteria of the Insolvency Professionals to be included in the Panel are 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 IRP, Liquidator, RP or BT, as he may be appointed by the AA
 - He holds an Authorisation for Assignment (**AFA**), which is valid till validity of Panel
- The aforementioned 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.
- In order to select the Insolvency Professionals, the IBBI shall invite expression of interest from Insolvency Professionals in 'Form A' 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 selection in the Panel shall be made upon the basis of the volume of assignments that a particular Insolvency Professional has. Hence, the Insolvency Professional having the least volume of assignment shall score the highest and the Insolvency Professional having highest volume shall be scored the least.
- 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 IRP, Liquidator, RP or BT, as the case may be
 - Decline to act as IRPs, Liquidator, RP or BT, as the case may be, if appointed by the AA
 - 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 the sole discretion of the NCLT
 - The submission of Expression of Interest in accordance with these guidelines, is an unconditional consent by the Insolvency Professional to act as IRPs, Liquidator, RP or BT, as the case may be
 - An Insolvency Professional who declines to act IRPs, Liquidator, RP or BT, on being appointed by the NCLT, 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



RECENT JUDGMENTS

Bhatpara Municipality v. Nicco Eastern Pvt Ltd, Nicco Corporation Ltd and The Executive Officer, Bhatpara Municipality

NCLAT | Judgment dated November 22, 2021 Company Appeal (AT) (Ins) No. 714 of 2021

Background facts

- The Liquidator of Nicco Corporation Ltd (**Corporate Debtor**) sold a certain manufacturing unit of the Corporate Debtor to the Auction Purchaser in the auction of properties of the Corporate Debtor during its liquidation process. The sale was affected in accordance with terms and conditions stipulated in the invitation for Expression of Interest, wherein it was stated that the proposal will be conducted on 'As is Where is and Whatever There is Basis' and 'No Recourse Basis'.
- The purchaser of the said property (**Respondent No.1**), after the confirmation of sale, applied to the Appellant for obtaining trading license and mutation of the said property in its name. In response to these applications, the Appellant issued a demand notice to the auction-purchaser to liquidate the outstanding dues of property tax of the above-mentioned manufacturing unit.
- Pursuant to the above, the auction purchaser filed an Application before the NCLT for declaring the demand made by the Appellant qua the Demand Notice as null and void.
- The NCLT vide order dated July 13, 2021 (**Impugned Order**), allowed the Application filed by the Auction Purchaser and quashed the Demand Notice issued by the Appellant, thereby rejecting the claim of the Appellant in respect of past dues of property from the auction purchaser.
- Aggrieved by the same, the Appellant filed the present Appeal before the NCLAT.

Issue at hand?

- Whether outstanding dues of the property tax relating to period prior to sale confirmation be claimed from the new owner of the property?

Decision of the Tribunal

- The NCLAT rejected the present Appeal on the ground that the outstanding dues of the property tax relating to period prior to sale confirmation are the dues that are akin to claim of an unsecured creditor and should be discharged in terms of the properties regarding distribution of assets given in Section 53 of IBC. Hence, the auction purchaser cannot be held liable to pay any such dues relating to period prior confirmation of sale.

- While arriving at the said decision, the NCLAT relied upon the decision of the Hon'ble Supreme Court in the matter of *AI Champdany Industries Ltd. v. The Official Liquidator & Anr*¹ wherein it was concurred that those dues of municipal tax do not create any encumbrance on the properties in question. They are simply a charge on the properties which is akin to claim of an unsecured creditor, and hence such a charge should stand in queue of claims to be paid out of sale assets, if such a claim has been filed in accordance with law and regulations.
- Further, the NCLAT also stated that in terms of the Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016 the Liquidator is duty bound to prepare an asset memorandum. The said memorandum contains information pertaining to the asset that may assist a prospective purchaser to purchase the asset. Pertinently, Clause (f) of sub regulation 2 of Regulation 34 stipulates the inclusion of 'any other information that may be relevant for the sale of the asset'. Hence, it is incumbent upon the Liquidator to mention all the information pertaining to the said asset in the Asset Memorandum.
- Thereafter, the NCLAT read the above-mentioned Regulation with the facts of the present case wherein the Liquidator failed to give a notice about the outstanding statutory dues regarding the manufacturing unit. Since the auction purchaser was not given the notice of the outstanding property tax that remained pending for the period prior to the sale of the asset, the purchaser cannot be penalized for the same.

Shailendra Singh v. Nisha Malpani (Resolution Professional)

NCLAT | Judgment dated November 22, 2021 [Company Appeal (AT)(INS) NO.945 OF 2020]

Background facts

- An Application for initiation of contempt proceedings against Nisha Malpani (**Respondent**), the Resolution Professional of the Corporate Debtor, was filed under Section 425 of the Companies Act, 2013 r/w Section 12 of the Contempt of Courts Act, 1971 and Rule 11 of the NCLT Rules, 2016 by Mr. Shailendra Singh (**Appellant**), the Interim Resolution Professional of the Corporate Debtor, for non-compliance of the Order dated November 7, 2019 passed by the NCLT, whereby, the NCLT directed the Respondent to re-pay the amounts payable to the Appellant incurred by him during the course being the IRP of the Corporate Debtor.
- The NCLT vide order dated September 23, 2020 (**Impugned Order**), dismissed the said Contempt Application filed by the Appellant on the ground that contempt jurisdiction has been provided under the Companies Act and that IBC is devoid of such 'contempt jurisdiction'.
- Aggrieved by the same, the Appellant filed the present Appeal against the Impugned Order.

Issue at hand?

- Whether Section 425 of the Companies Act, 2013 empowers NCLT and NCLAT to initiate proceedings against its contempt in matters related to IBC, 2016 or do the powers of the NCLT or NCLAT pertain only to the matters under the Companies Act, 2013?

Decision of the Tribunal

- The Hon'ble NCLAT allowed the present appeal on the ground that just because IBC does not specifically mention about the contempt provisions, it cannot be said that the 'Adjudicating Authority' (**National Company Law Tribunal**) has no powers of contempt. While referring to the Statement and Objects and Reasons of the IBC Bill, 2016 it observed that NCLT is to act as an Adjudicating Authority for the purpose of matters pertaining to the IBC. However, such jurisdiction cannot be limited in situation wherein the principals of natural justice are being blatantly violated.
- Thereafter, the NCLAT gave a co-joint reading to Section 425 and 408 of the Companies Act, 2013 to elucidate that the power to punish for 'contempt' is vested with the 'Tribunal' shall be while adjudicating on matter not only confine to the Companies Act, 2013 but also to matters relating to the IBC.
- Additionally, it was opined that merely because the IBC does not specifically mention about the contempt provisions, it cannot be said that the AA/NCLT has no powers of contempt, as while interpreting a statute, a purposeful, meaningful, practical, and rational construction of Statute is ought to be given, so that the provisions of Statute cannot be rendered nugatory and futile.
- It was also opined that the purpose of punishment under contempt jurisdiction is not only 'curative' but also 'corrective' and in fact one cannot be permitted to bring disrepute to the majesty and supremacy of law and the image of the temple of justice. It will be a travesty of

¹ Civil Appeal No. 1118 OF 2009

HSA Viewpoint

This decision is in consonance with principle laid down by the Hon'ble Supreme Court in the Essar judgment, wherein the Court held that the Resolution Applicant cannot be penalized for the claims which were not part of approved plan. This decision brings us some clarity that be it the CIRP or the Liquidation of a Corporate Debtor, the successful Resolution Applicant, or the successful purchaser of the property, as the case may be, cannot be held responsible for the claims that were beyond their scope while investing into the Corporate Debtor as a whole or in its particular asset.

justice if the Tribunals are to permit gross contempt of court to go unpunished if they are not empowered to take such contempt actions against it.

- It was also observed that Article 323A and Article 323 B of the Constitution of India has also given the power to the Legislature to empower the Tribunals, through appropriate legislation to exercise the jurisdiction of power to punish for the contempt.
- Further, in terms of the National Company Law Tribunal Rules, the NCLAT significantly pointed out that National Company Law Tribunal Rules, 2016, Part IV, General Procedure, Rule 34(1) under the caption 'General Procedure' enjoins that in a situation not provided for in these Rules, the 'Tribunal', may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice. As a matter of fact, Rule 59(1) of the National Company Law Tribunal Rules, 2016 states that a reasonable opportunity to represent his or her or its case before the Bench or any other officer authorized in this behalf before passing an order or direction imposing penalty under the Companies Act is to be given
- On the basis of the aforementioned reasons, the tribunal directed to the NCLT to restore the previously filed Contempt Application and asked it to dispose of the same on merits as expeditiously as possible.

HSA

Viewpoint

In our view, by this judgment, the NCLAT has empowered the Tribunals with contempt jurisdiction. This will ensure that the basic principles of natural justice are scrupulously adhered to, and the majesty of the courts is upheld.

TATA Consultancy Services Ltd v. Vishal Ghisulal Jain, Resolution Professional of SK Wheels Pvt Ltd

Supreme Court of India | Judgment dated November 23, 2021 [Civil Appeal No 3045 of 2020]

Background facts

- TATA Consultancy Services Ltd (**Appellant**) entered into a Facilities Agreement with SK Wheels Pvt Ltd (**Corporate Debtor**). As per the terms of the said agreement, the Corporate Debtor was under the obligation to inter alia provide the premises with certain specifications and facilities as laid down in the agreement to the Appellant for conducting examinations for education institutions.
- Certain disputes arose between the Appellant and the Corporate Debtor regarding the deficiency of services on part of the Corporate Debtor in completion of its obligations in terms of Facilities Agreement. Due to the same, on multiple instances the Appellant had communicated to the Corporate Debtor regarding the deficiencies in its services. The Corporate Debtor was put on notice that the penalty and termination clauses of the Facilities Agreement may be invoked through communications dated August 1, 2018, September 17, 2018, October 1, 2018, and October 11, 2018.
- During the course of the abovementioned disputes, the Hon'ble NCLT vide order dated March 23, 2019 initiated CIRP of the Corporate Debtor and imposed moratorium in terms of Section 14 of the IBC. Subsequent to such initiation of the CIRP of the Corporate Debtor, the Appellant terminated the Facilities Agreement vide termination notice dated June 10, 2019 citing material breach in the Facilities Agreement and failure on the part of the Corporate Debtor to remedy such breach.
- Thereafter, pursuant to the notice of termination, the Corporate Debtor filed an application before the NCLT under Section 60(5)(c) of the IBC for quashing of the termination notice. The NCLT vide order dated December 18, 2019 granted an ad-interim stay on the notice for termination of the Facilities Agreement issued by the Appellant and directed the Appellant to comply with the terms of the Facilities Agreement.
- Aggrieved by the same, the Appellant preferred an Appeal before the NCLAT. The NCLAT by its order dated June 24, 2020 (**Impugned Order**) upheld the order of the NCLT and observed that it had correctly stayed the operation of the termination notice since the main objective of the IBC is to ensure that the Corporate Debtor remains a going concern.
- Being aggrieved by the Impugned Order of the NCLAT, the Appellant filed the present Appeal before the Hon'ble Supreme Court. The Appellant relied upon the decision of the Supreme Court in *Gujarat Urja Vikas v. Amit Gupta & Ors*² and urged that since the present contract was not the only source of survival of the Corporate Debtor, therefore, the NCLT & NCLAT could not have directed the Appellant to continue with the Facility Agreement.

Issues at hand?

- Whether the NCLT can exercise its residuary jurisdiction under Section 60(5)(c) of the IBC to adjudicate upon the contractual dispute between the parties?

² Civil Appeal No. 9241 of 2019

- Whether in the exercise of such a residuary jurisdiction, it can impose an ad-interim stay on the termination of the Facilities Agreement?

Decision of the Court

- During the course of the arguments, the application of Section 60(5) of the IBC was discussed in terms of the decision of the Hon'ble Supreme Court in *Gujarat Urja Vikas v. Amit Gupta & Ors (Supra)* and in order to illustrate the extent of the powers of the NCLT to adjudicate the cases arising during the course of the Resolution Process of the Corporate Debtor. Further, the effect of Section 238 of the IBC was also discussed in terms of the non-obstante clause read with the decision of Hon'ble Supreme Court in *Ashoka Marketing v. PNB*³, accordingly it was argued that since IBC was introduced later than the Specific Relief Act, hence, the Non-obstante clause of IBC as mentioned in Section 238 would prevail over any other remedy that might be available in any other enactment.
- Upon considering the rival contentions, the Court held that the present case is not fit for the application of the decision as held in *GUVNL v. Amit Gupta & Ors (Ibid)*. While arriving at the said decision, the Supreme Court firstly at length elucidated the facts and circumstances that were considered while arriving at the decision in *GUVNL v. Amit Gupta & Ors (Ibid)* Considering the same, the Apex Court held that although the powers provided to the NCLT under Section 60(5) of the IBC are very wide. However, the same have also been limited to play over the disputes which arise particularly in relation to the CIRP of the Corporate Debtor. In the present case, since the agreement between the party was not the only survival kit of the Corporate Debtor nor was it in relation to the CIRP of the Corporate Debtor, therefore, the NCLT or the NCLAT could not have interfered in the termination of the facility agreement by the Appellant.
- Additionally, with respect to the application of Section 14 of the IBC restraining the Appellant from terminating the contract, the court observed that the Appellant is neither supplying any essential goods or services to the Corporate Debtor in terms of Section 14 (2) nor is it recovering any property that is in possession or occupation of the Corporate Debtor as the owner or lessor of such property as envisioned under Section 14 (1) (d). Thus, Section 14 is not applicable to the present case either.
- Lastly, on the point of the reliance of the NCLAT on Section 25 of the IBC to hold that the RP can invoke the jurisdiction of the NCLT to stay the termination of the Facilities Agreement in pursuance of its duty to preserve the Corporate Debtor as a going concern, the court while relying on the case of *Embassy Property Developments (Private) Limited v. State of Karnataka*⁴, held that the duties of the RP are entirely different from the jurisdiction and powers of the NCLT and cannot be conflated.
- On the basis of the aforementioned reasonings, the Supreme Court set aside the Impugned Order.

HSA Viewpoint

With the present decision of the Supreme Court, a clarity has been brought about regarding what sort of contracts can be terminated even when a Corporate Debtor is undergoing the Resolution Process. Further, various contractors who have been stuck with a Corporate Debtor only because of the non-obstante clause of the IBC, can now free themselves from the contractual obligation, provided that the same does not jeopardize the survival of the Corporate Debtor.

Electrosteel Castings Ltd v. UV Asset Reconstruction Company Ltd & Ors

Supreme Court of India | Judgment dated November 26, 2021 Civil Appeal No. 6669 of 2021

Background facts

- Electrosteel Steels Ltd (**Corporate Debtor**) availed a loan facility from SREI Infrastructure Finance Ltd (**SREI**). Electrosteel Castings Ltd (**Appellant**), stood as a guarantor to the loan facility agreement. Accordingly, a mortgage was created by the Appellant in favor of SREI for the said purpose.
- The Corporate Debtor defaulted on its dues and subsequently, an application under Section 7 of the IBC was filed by the State Bank of India against the Corporate Debtor for initiation of CIRP of Corporate Debtors. Thereafter, a Resolution Plan came to be approved by the Committee of Creditors under Section 30(4) of the IBC and the NCLT, vide order dated April 17, 2018 approved such Resolution Plan.
- Thereafter an assignment agreement was executed between SREI and UV Asset Reconstruction Company Ltd (**UVARCL**), Respondent No. 1 herein, on June 30, 2018, wherein SREI assigned all the rights, titles, and interest in all the financial assistance provided by SREI in terms of the loan facility agreement in favor of UVARCL.
- Upon such assignment, UVARCL initiated proceedings against the Appellant, who stood as guarantor, under Section 13(2) of the SARFAESI Act, 2002, demanding the payment of INR 587

³ (1990) 4 SCC 406

⁴ (2020) 13 SCC 308

crore. Subsequently, a possession notice was issued under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 by the UVARCL to the Appellant.

- Aggrieved by the actions of UVARCL, the Appellant instituted a Civil Suit before the High Court of Madras, wherein the learned Single Judge of the High Court, vide order dated September 30, 2019, dismissed application on the ground of jurisdiction. The Court observed that the suit was for land and property situated outside the jurisdiction of the court and hence not maintainable. It was also observed and held that the civil court's jurisdiction is barred in view of Section 34 of the SARFAESI Act and only DRT had the competence to decide the matter. A subsequent appeal before the Division Bench of the High Court was also dismissed in view of the bar under Section 34 of the SARFAESI Act.
- Aggrieved by the order of the Division Bench of the High Court, the appellant preferred an appeal to the Supreme Court.

Issues at hand?

- Whether action under the SARFAESI Act can be taken after the Resolution Plan for a Corporate Debtor has been approved and who would be the competent authority to deal with issues arising from an assignment agreement which has been executed after the approval of Resolution Plan.

Decision of the Court

- During the course of the arguments, it was argued that the High Court failed to consider the argument of the Appellant that such assignment agreement was fraudulent in nature and the relief sought by the Appellant to declare the said assignment as null, cannot be granted by the DRT under the provisions of the SARFAESI Act. Accordingly, it was argued that when the suit is filed alleging 'fraud', the bar under Section 34 of the SARFAESI Act shall not be applicable. It was further argued that since all the obligation by the successful Resolution Applicant was fulfilled upon the approval of the Resolution Plan, the initiation of the proceedings under the SARFAESI Act are bad in law and not maintainable.
- On the contrary, the Respondent argued that just because the words 'fraud' has been merely used, the same does not make the particular assignment fraudulent and any issues arising of the same should be adjudicated on the merits.
- Upon considering the arguments of the rival parties, the Supreme Court limited itself to adjudicate upon the issue whether the contention raised by the Appellant that the said assignment agreement is 'fraudulent' or not. In view of the same, the Supreme Court observed that the allegations of 'fraud' are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act. The mere mentioning and using of the word fraud/fraudulent is not sufficient to satisfy the test of fraud. Such a pleading using the word 'fraud'/'fraudulent' without any material particulars would not be tantamount to pleading of 'fraud'. In view of the same, the Court also referred to the case of *Ram Singh v. Gram Panchayat Mehal Kalan & Ors*⁵ wherein it was held by the Supreme Court that when the suit is barred by any law, the Plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation. Accordingly, the Supreme Court observed that the assignment deed cannot be said to be 'fraudulent'.
- Thereafter, with regard to the contentions raised by the Appellant regarding the issues arising from the assignment agreement executed after the approval of the Resolution Plan, the Supreme Court held that DRT is the competent authority to deal with these issues. Therefore, the Supreme Court held that the High Court did not commit any error in rejecting the plaint/dismissing the suit in view of the bar under Section 34 of the SARFAESI Act.

HSA Viewpoint

This judgment clarifies the concept of fraud and also clarifies the jurisdiction and powers of the DRT with respect to Section 34 of the SARFAESI Act which ousts the jurisdiction of Civil Courts. This judgment will prevent recalcitrant borrowers from surreptitiously taking recourse to remedies before the civil court, especially when the specially constituted DRT is empowered to deal with the same.

⁵ 1986 AIR 2197



RECENT DEALS

Resolution of Aryavir Buildcon Pvt Ltd

In this matter, the Resolution Professional (Mr. Shashi Kant Nemani) was represented by our team comprising of [Mr. Abhirup Dasgupta](#) (Partner), [Mr. Ishaan Duggal](#) (Senior Associate) and [Ms. Bhawana Sharma](#) (Associate).

- The NCLT, New Delhi Bench, vide an order dated November 23, 2021 approved the Resolution Plan submitted by Mr. Sarabjit Singh, the Successful Resolution Applicant, in the CIRP of Aryavir Buildcon Pvt Ltd (ABPL), the Corporate Debtor.
- Vide order dated December 17, 2020, the NCLT, New Delhi Bench admitted the Company Petition filed by Tourism Finance Corporation Of India (TFCI) under Section 7 of the IBC and ordered for initiation of the CIRP of FEEL. Mr. Shashi Kant Nemani was appointed as the IRP and thereafter confirmed the Resolution Professional.
- The Resolution Professional issued Form-G inviting EoIs from Prospective Resolution Applicants. Pursuant to the public announcement, EoIs and Resolution Plans were received from various Prospective Resolution Applicants.
- A total 5 Prospective Resolution Applicant submitted the Resolution Plans. After due discussion and deliberation, the Resolution Plan received from Mr. Sarabjit Singh was approved with 100% Voting share by the CoC.
- A perusal of the Resolution Plan shows that the term of the plan is distributed over a period of 90 days from the date of approval by the NCLT. The Resolution Plan provides for a total payment of INR 67.50 crore i.e. repayment of the entire admitted amount. Additionally, the Plan also proposes to continue the operation of the Corporate Debtor as a going concern. However, there will be a change in the management of the hotel, the current operator i.e. Marriot International will be changed to Novotel. Further, the part of the property that has been leased out to M/s Apollo Specialty Hospitals Pvt Ltd (Apollo Hospitals) shall continue to remain under lease and under the operation of Apollo Hospitals.
- This is one of the few cases which have been successfully resolved by 100% payment to the Committee of Creditors.

NCLT, Principal Bench gives nod to Resolution Plan submitted by Adani Power Ltd for resolution of Essar Power Ltd

- Mr Ashish Chhawchharia, the Resolution Professional of Essar Power Ltd, the Corporate Debtor, placed the approved Resolution Plan of Adani Power Ltd, the Successful Resolution Applicant, before the NCLT, Principal Bench for approval under Section 30(6) and Section 31(1) of the IBC.
- The CIRP of Essar Power Ltd was initiated pursuant to the admission order dated September 29, 2020 by NCLT, Principal Bench. Subsequently, a public announcement for the collation of claims

in terms of Regulation 6(1) of the CIRP Regulations was made by the IRP and the CoC of the Corporate Debtor was constituted.

- The Resolution Professional thereafter published the Form G inviting the EoI. In response to the same, EoIs were received from leading power generation giants i.e., Adani Power Ltd, Vedanta Ltd, Jindal Power Ltd and NTPC Ltd. However, Resolution Plans were only received by Adani Power Ltd and Vedanta Ltd.
- In the 11th meeting of the CoC held on May 21, 2021 the Plan submitted by Adani Power Ltd was deliberated upon and thereafter approved by a 100% majority.
- The Resolution Plan by Adani Power Ltd provides for a total payment of INR 2500 crore against an admitted debt of INR 12,723 crore (Approx).
- The Bench while approving the Plan vide order dated November 01, 2021 dealt with certain applications filed by the Operational Creditors aggrieved against 'NIL' amount being paid in the Resolution Plan. While considering the said applications, the NCLT stated that while ascertaining the amount to be dispensed to the Operational Creditors, the higher of either the amount payable in terms of Section 53 of the IBC or the amount paid in the Resolution Plan is to be considered. Whereafter, the NCLT observed that since the Liquidation value of the Operation Creditor is 'NIL' either way, hence, the applications by the Operational creditors in not maintainable.

Resolution Plan approved for Crest Steel and Power Pvt Ltd

- The Resolution Process of Crest Steel and Power Pvt Ltd, the Corporate Debtor, came to an end vide an order dated November 01, 2021 passed by the NCLT, Cuttack Bench, wherein it approved the Resolution Plan submitted by Nithia Capital Resources LLP and Mr. Jai Saraf, in the CIRP of Crest Steel and Power Pvt. Ltd.
- The Application for initiation of CIRP filed by an Operational Creditor under section 9 of the IBC against Crest Steel and Power Pvt Ltd was admitted by the NCLT on April 22, 2019. Thereafter, after following the due process, the Resolution Professional received six Resolution Plans, whereafter the Resolution Plan submitted by Majestic was duly approved by the CoC with the requisite voting share in the 9th CoC meeting held on January 30, 2020.
- Crest Steel and Power Pvt. Ltd. is engaged in the business production of iron sponge and steel.
- The Resolution Applicants propose to make a total payment of an amount not exceeding INR 316 crore against an admitted debt of INR 3651.70 crore for the resolution of the Corporate Debtor
- Further, the Resolution Applicants intend to infuse INR 80 crore by way of a Fund Infusion (as defined hereinafter) within 12 months of the Closing Date. The Corporate Debtor shall continue as a going concern; however, the Resolution Applicants proposes to split/demerge the Corporate Debtor into 2 separate and distinct legal entities pursuant to a scheme of demerger.
- Lastly, the Company shall undertake a capital reduction, whereby all the equity shares and preference shares of the Company held by any person on a fully diluted basis shall stand cancelled and extinguished, without any pay-out, or cash consideration to the Financial Creditors, Operational Creditors, Employees and Workmen, statutory creditors, Other Creditors, other third parties, the existing shareholders, and any other Person. The face value of the equity shares so cancelled shall be transferred to the capital reserve of the Company.



COMPANIES ADMITTED TO INSOLVENCY IN NOVEMBER 2021

Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	GHO Agro Private Ltd	Chennai	<u>Manufacturing</u> The company is a food production company and deals in dairy-based products.
2	P.S.T.S. Logistics Pvt Ltd	Chennai	<u>Shipping</u> The company is a cargo shipping and management company which provides end-to-end solutions for dry bulk, break bulk, industrial projects and containerized cargo.
3	Vaasan Medical Center (India) Pvt Ltd	Chennai	<u>Services</u> The company provides health care services.
4	JVPD Properties Pvt Ltd	Mumbai	<u>Infrastructure</u> The company carries the business of construction and infrastructure development.
5	GPR Resources Pvt Ltd	Chennai	<u>Real Estate</u> The company engages in logistics and import- export business like export of granite moulds to South- Eastern countries.
6	Divya Spinning mills Pvt Ltd	Chennai	<u>Textile</u> The company engages in the business of manufacturing of textiles.
7	ETA Engineering Pvt Ltd	Chennai	<u>Manufacturing</u> The company manufactures HVAC Equipments and allied Products.
8	BST Infratech Ltd	Kolkata	<u>Manufacturing</u> The company is a manufacturer, supplier and exporter of iron and steel products.
9	Mittal Corp Ltd	Mumbai	<u>Manufacturing</u> The company is engaged in the business of production of cold rolled steel and coated steel products that are used for automobiles, home appliances, construction, etc.
10	Unibera Developers Pvt Ltd	New Delhi	<u>Real Estate</u> The company engages in real estate activities which includes buying, selling, renting and operating of property.
11	Abhirama Steels Ltd	Hyderabad	<u>Manufacturing</u> It is involved in manufacturing of steel and products thereof.
12	Banger Tech Pvt Ltd	Kolkata	<u>Services</u> The company develops application software. It operates an online grocery portal that provides dairy products and grocery.
13	Surya Landmark Developers Pvt Ltd	Mumbai	<u>Real Estate</u> The company is engaged in developing residential projects.
14	Blue Blends (India) Ltd	Mumbai	<u>Textile</u> The company is engaged in the business of manufacturing Denim fabric and products thereof.

15	Reliance Capital Ltd	Mumbai	<p><u>Services</u> Reliance Capital, a constituent of MSCI Global Small Cap Index, is a part of the Reliance Group. It is in the business of providing financial services and has interests in life, general and health insurance; commercial & home finance; equities and commodities broking; wealth management services; distribution of financial products; asset reconstruction; proprietary investments and other activities in financial services.</p>
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Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Sembmarine Kakinada Ltd	Amravati	<p><u>Services</u> It engages in ship repair and fabrication facility.</p>
2	Nakshatra Brands Ltd	Mumbai	<p><u>Jewelry</u> The company has been in the business of selling diamond jewelry.</p>
3	All Best Offshore Marine Ltd	New Delhi	<p><u>Services</u> The company is in the business of providing repairs services of ships/cargo ships etc.</p>
4	JSK Marketing Ltd	Mumbai	<p><u>Services</u> The company offers brands with marketing and distribution strategies, specializing in the electronics, FMCG, telecommunication, and household appliances industries.</p>

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PROJECT FINANCE



REAL ESTATE



REGULATORY & POLICY



RESTRUCTURING & INSOLVENCY



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