

Restructuring & Insolvency

Monthly Newsletter

July 2023

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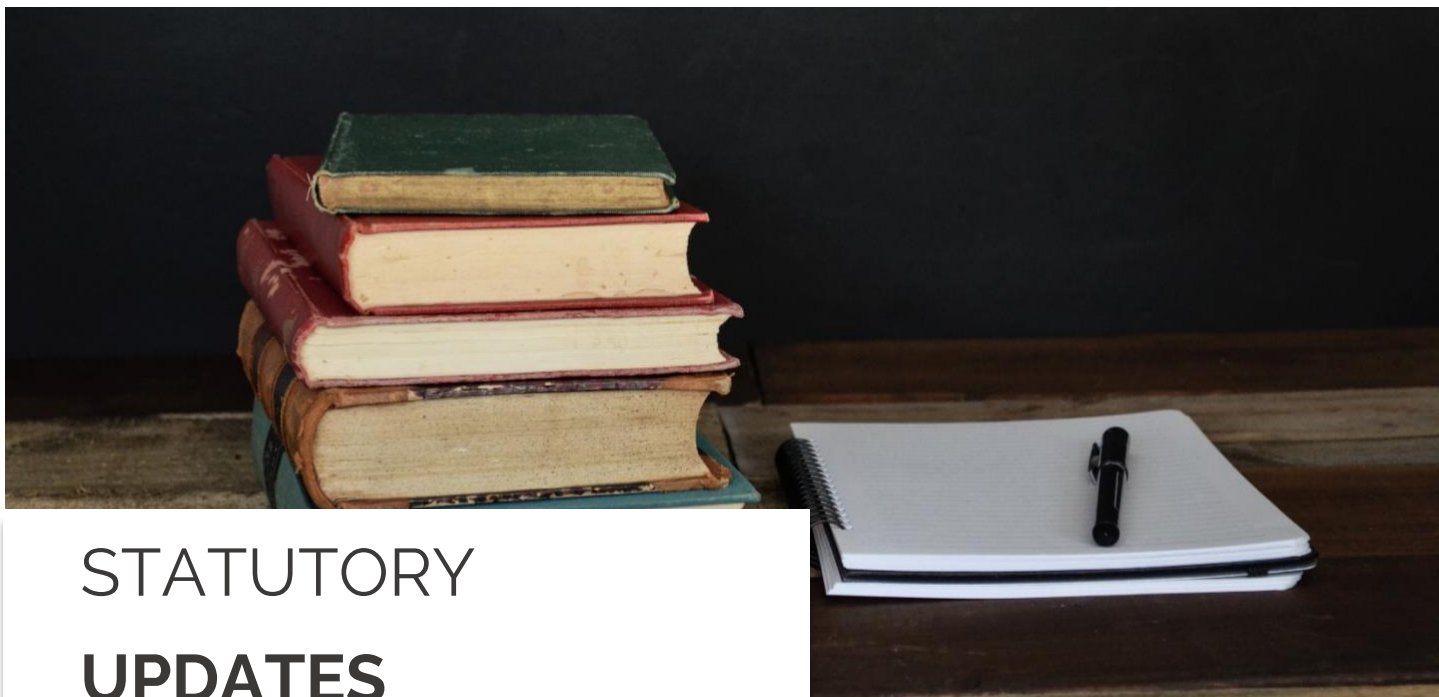
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STATUTORY UPDATES

Discussion Paper on measures for increasing the possibility of resolution, value of Resolution Plan and enabling timely resolution

- The Insolvency and Bankruptcy Board of India (IBBI) vide Discussion Paper (**Paper**) dated June 07, 2023 proposed measures for increasing the possibility of resolution, value of Resolution Plan and enabling timely resolution.
- The Paper deals with two major criticisms of the resolution process under the Insolvency and Bankruptcy Code, 2016 (**IBC**): the resolution of fewer companies with lesser value realization; and the time taken for resolution being longer than the time prescribed under the law.
- The salient amendments that have been proposed thereunder are:
 - **Timeline for providing information for assignment of debt:** Regulation 28 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) provides the relevant procedure. Under Regulation 28(1), if a creditor decides to assign or transfer debt, both the original creditor and the transferee are required to inform the Interim Resolution Professional (**IRP**) or the Resolution Professional (**RP**) of the Corporate Debtor (**CD**). The proposed amendment in Regulation 28(1) is the prescribed timeline of 7 days from assignment.
 - **Seeking information from personnel of the Corporate Debtor:** Regulation 4(2) of the CIRP Regulations stipulates that the personnel of the CD are to provide information as sought by the IRP or RP. The proposed amendment, by inserting Regulation 3A to the CIRP Regulations, mandates the personnel of the CD to hand over the assets as per the balance sheet or in any other record referred in Section 18 (1)(f).
 - **Modification of timelines for submission and consolidation of claims:** Regulation 12 of the CIRP Regulations provides a framework for submission and proof of claims by creditors in terms of which creditors are to submit claims on or before the last date mentioned in the public announcement, failing which, by the 90th day from the insolvency commencement date. The proposed amendment in Regulation 12(2) is in case a creditor fails to submit the claim within the stipulated time period, the claim may be submitted not later than the date of issuance of request for Resolution Plans under Regulation 36B or 90 days from insolvency commencement date, whichever is later. In the event claims are received after the specified period, the IRP or RP must verify all claims and categorize them as acceptable or non-acceptable. The categorized claims will then be submitted in an application to the NCLT on behalf of the creditors. This application shall be presented in two parts- one containing claims that are acceptable for condonation of delay and another containing claim deemed unacceptable by the RP. In Regulation 13, sub-Regulation 2C is inserted mandating the IRP or RP to provide reasons for the rejection of any claim or deeming a claim as unacceptable.
 - **Increase of duties of Authorized Representatives:** Section 25A of the Code outlines the rights and obligations of the Authorized Representatives (**ARs**) of Financial Creditors (**FCs**).

While acting as an intermediary between CoC and the CD, the AR is responsible for ensuring that the CoC fulfils all its obligations and protecting the interest of the FCs. Regulation 16A of the CIRP Regulations is to be amended by the insertion of Sub-Regulations for increase in duties of ARs. These include assisting the creditors in understanding the discussions of CoC, review contents of minutes prepared by RP, work collaboratively with CoC, maintain communication with RP, regularly update creditors of the CIRP progress, represent creditors in interactions with NCLT, NCLAT and other regulatory authorities, assist in modification of the Resolution Plan, record proceedings and prepare minutes of meetings with creditors, and lastly allowing creditors to propose any additional responsibilities upon the AR.

- **Increase of fee of Authorized Representative:** Section 21(6B)(ii) of the IBC provides the remuneration payable to the AR. Regulation 16A(8) of CIRP Regulations specifies the entitlement of ARs to receive fees for attending every CoC meeting. The proposed amendment seeks to replace Regulation 16A(8), to increase the fee of the AR with the increased duties.
- **Replacement of Authorized Representative:** Section 21(6A) (b) of the Code read with Regulation 16A(1) of the CIRP Regulations provides the mechanism of appointing an AR for the FCs. However, there is no provision for replacement of an AR after his appointment by the NCLT. The proposed amendment to Regulation 16A provides that the creditors in a class with 10% voting powers may seek replacement of the AR by making a request to the RP and may choose to give a choice of IP who shall act as an AR in the matter. The RP will then offer a choice of three IPs to act as AR including the IPs suggested if any by such creditors in class. This replacement will then be confirmed by the NCLT.
- **Inclusion of relevant minutes in Form H:** Regulation 39(4) of the CIRP Regulations mandates the RP to submit the Resolution Plan approved by the CoC to the NCLT along with the compliance certificate in Form H. It is proposed to amend Schedule I of the Regulations pertaining to Form H to include the relevant CoC minutes pertaining to the discussions and decisions of the CoC about the Resolution Plan to provide transparency and context to the resolution process.
- **Addressing the aspect of limitation in application for initiation of insolvency resolution proceedings:** Regulations 2A to 2C of the CIRP Regulations lay down the procedure and the requirements for the submission of records or evidence of default by financial and operational creditors. The current Regulations, however, do not provide an account for the aspect of limitation. It is proposed to insert a new Regulation 2D in the Principal Regulations wherein along with the application under Section 7 or 9 of the IBC, the Financial Creditor or the Operational Creditor shall also submit an affidavit, providing a detailed chronology of the debt and default and explaining why the application is not barred by limitation. Further, the affidavit should detail the date when the debt become due, any subsequent acknowledgements of debt and the period of limitation applicable to the debt.
- **Favorable voting on more than one Resolution Plan:** Section 30(3) of the Code envisages that the RP shall present to the CoC for its approval such Resolution Plans which conform with the conditions under Section 30(2) of the code. Further Section 30(4) of the code provides for CoC to approve a Resolution Plan by a vote not less than sixty-six percent of the voting share of the FC. Regulation 39(3) of CIRP Regulations provides that when more than one Resolution Plans are available, all plans are put to vote simultaneously with the plan that receives the highest affirmative votes subject to receiving the requisite 66% is regarded to be approved by the CoC. In an event when two or more Resolution Plans securing equal number of votes, the committee approves any one of them as per tie-breaker formula announced before voting. However, the current voting framework does not offer a system for creditors to elicit their preferences on these plans. It is proposed to use a system of voting with preference which shall be substituted in Regulation 39(3B) providing that when two or more Resolution Plans are put to vote simultaneously, the plan which receives the highest vote as per single transferrable vote, but not less than requisite votes, shall be considered approved.
- **Changes in timelines:** Under Regulation 36(1) & 36A(10), RP should submit the information memorandum to the CoC by T+95 days and issue a provisional list of prospective resolution applicants by T+85 days. However, an apparent typographical error requires the RP to issue the relevant documents to prospective applicants by T+105 days, preceding submission to CoC. Regulation 40A is proposed be amended to include correcting the timeline to T+90 days, reducing the IM submission to T+80 days, and changing the Resolution Plan receipt to 45 days, keeping the total timeline at T+135 days.
- **Audit Requirement for Insolvency Resolution Process Cost (IRPC) in certain CIRPs:** IRPC as defined under Section 5(13) of the Code comprises of various costs including costs specified under Regulation 31 of the CIRP Regulations. Given the substantial implications

of these costs in larger CIRPs, the proper management and verification of IRPC is paramount for maintaining transparency and accountability.

- It is proposed to introduce an audit requirement for CIRPs involving CDs of a certain asset size within the CIRP Regulations. The expenses incurred towards the audit of IRPC shall be included as part of the IRPC. The RP shall ensure that the audit cost is appropriately budgeted and included in the overall IRPC. It is also proposed that the RP shall get the audit of IRPC conducted after finalization of the cost for the Financial Year. The audit of IRPC shall be conducted by a Chartered Accountant who is recognized as an Insolvency Professional.

MCA Notification on Section 14 of the IBC

- The Ministry of Corporate Affairs (MCA) vide Notification dated June 14, 2023 notified that the provision of sub-Section (1) of Section 14 of the IBC shall not apply if the Corporate Debtor has entered into any of the transactions, arrangements or agreements specified thereunder.
- The transactions, arrangements and agreements specified under the said notification are of two types:
 - *The Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oilfields (Regulation and Development) Act, 1948 (53 of 1948) and rules made thereunder; and*
 - *Any transactions, arrangements, or agreements, including Joint Operating Agreement, connected or ancillary to the transactions, arrangements or agreements referred to in Clause (i).*

RBI Circular on the framework for compromise settlements and technical write-offs

- On June 08, 2023 Reserve Bank of India (RBI), with a view to provide impetus to the resolution of stressed assets in the system and to harmonize the instructions across all the Registered Entities (RE), has issued a comprehensive regulatory framework governing compromise, settlements, and technical write-off (Compromise settlement refers to any negotiated arrangement with the borrower to fully settle the claims of the RE against the borrower in cash; it may entail some sacrifice of the amount due from the borrower on the part of the REs with corresponding waiver of claims of the RE against the borrower to that extent. Technical write-off refers to cases where the NPAs remain outstanding at borrowers' loan account level but are written-off (fully or partially) by the RE only for accounting purposes, without involving any waiver of claims against the borrower, and without prejudice to the recovery of the same).
- This Circular substitutes the following previous Circulars:
 - (Circular bearing DBOD No. BP.BC.81/21.01.040/95 dated July 28, 1995 on Compromise or Negotiated Settlements of Non-Performing Assets (NPAs))
 - Circular bearing DBOD.BP.BC.55/21.04.117/2007-08 dated November 30, 2007 on Guidelines on Settlement of Non-Performing Assets - Obtaining Consent Decree from Court
 - Circular bearing DBOD.BP.BC.No.112/21.04.048/2009-10 dated June 21, 2010 on Compromise/Negotiated/One Time settlement of NPAs
- In terms of the framework, REs are required to formulate policies for undertaking compromise settlements with the borrowers as well as for technical write-offs and the same must be approved by the Board.
- The policy shall comprehensively lay down the process to be followed, with specific guidance on the necessary conditions precedent such as minimum ageing, deterioration in collateral value etc. as well as graded framework for examination of staff accountability with reasonable thresholds and timelines.
- The policy shall also provide the delegation of powers for the approval of compromise settlements and technical write-offs.
- The Circular provides that compromise settlements in which the time for payment of the settlement amount exceeds three months, the same shall be treated as 'Restructuring' under the relevant framework. Further, in case of partial technical write-offs, the prudential requirements in respect of residual exposure, including provisioning and asset classification, shall be with reference to the original exposure.
- Compromise settlements and technical write-offs approved by any authority will be reported to the next higher authority at least on a quarterly basis. Those approved by the MD & CEO would be reported to the Board. The Board shall notify a format for the purpose of reporting.
- In terms of the Circular, borrowers subjected to compromise settlements shall have a cooling period before the REs can assume fresh exposures to them. REs are permitted to undertake

compromise settlements or technical write-offs in respect of accounts categorized as fraud or willful defaulter without prejudice to the criminal proceedings against such debtors.

- The compromise settlements with the borrowers under the above framework shall be without prejudice to the provisions of any other statute in force. REs had commenced recovery proceedings under a judicial forum and the same is pending before such judicial forum, any settlement arrived at with the borrower shall be subject to obtaining a consent decree from the concerned judicial authorities.

IBBI Circular on application to initiate corporate insolvency resolution process under Sections 7 or 9 of the Insolvency and Bankruptcy Code, 2016 along with record of the default issued by the Information Utility

- The Insolvency and Bankruptcy Board of India (IBBI) vide Circular dated June 16, 2023 advised creditors filing applications under Section 7 and 9 of the IBC to append the record of default issued by the Information Utility along with the applications filed under Section 7 or 9 of the IBC.
- The said Circular is in furtherance of the Notification No IBBI/2022-23/GN/REF085 dated June 14, 2022 vide which Regulation 20(1A) was inserted in the IBBI (Information Utility) Regulations, 2017 mandating the Information Utility to process the financial information and issue the record of default to the creditors so as to facilitate creditors to attach the same with their applications under Section 7 or 9 of the IBC.
- The Circular also brings to notice the general order dated April 03, 2023 issued by the NCLT advising all applicants under Sections 7 or 9 of the IBC to comply with Regulation 20(1A) and produce the record of default issued by the Information Utility for effective hearing of cases.



RECENT JUDGMENTS

Actioncor Consultants Pvt Ltd v. Viprah Technologies Ltd

National Company Law Appellate Tribunal, Chennai | Judgment dated June 01, 2023 | T.A. No. 190/2021 in Company Appeal (AT) (Insolvency) No. 916/2019

Background facts

- This appeal is preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Actioncor Consultants Pvt Ltd (**Appellant**). The Respondent, Viprah Technologies Ltd is the Corporate Debtor.
- Around 2010, when the Respondent Company was registered as a sick industrial company with BIFR, one Mr. Subramanian, a director of the Respondent Company, approached Mr. KKM for a loan of INR 1.24 crore to pay off the debt of the Secured Creditors of the Respondent Company and deregister it from BIFR.
- Numerous emails were exchanged between the parties and the intention of the parties was such that a loan would be provided by the Appellant for the revival of the Respondent Company.
- On July 12, 2010, an Investment Agreement was entered into between Mr. KKM and Mr. Subramanian and Mrs. Sujatha Ananth as the Director and Managing Director of the Respondent Company, whereby, the Appellant agreed to disburse INR 1.40 crore.
- On September 29, 2010, BFI Factoring Services Ltd confirmed the receipt of the cheque for a sum of INR 65 lakh as full and final settlement of the dues owed by the Respondent Company to ARCIL. However, the Respondent Company continued to be registered under BIFR until it was abolished on December 01, 2016.
- The Respondent Company failed to repay the loan and allegedly committed a default, in spite of a demand notice dated December 05, 2017 demanding the payment of INR 1.40 crore along with interest. Consequently, the Appellant filed a Section 7 Application against the Respondent Company.
- The NCLT, Chennai Bench dismissed the Section 7 Application, holding that there was no repayment obligation on the Respondent Company, as the loan was taken by Mr. Subramanian and Mrs. Sujatha and thus, there was no 'promise to pay' on account of the Respondent Company. Aggrieved by this decision, the Appellant preferred the present Appeal before the NCLAT.

Issue at hand?

- Whether the amount lent by the Appellant to Mr. Subramanian and his wife Mrs. Sujatha representing the Corporate Debtor Company, can be construed as 'financial debt' as defined under Section 5 (8) of the Code?

HSA **Viewpoint**

In this case, the National Company Law Tribunal (NCLT) reaffirmed the principle that for a transaction to be classified as a 'financial debt' under the Insolvency and Bankruptcy Code, there must be a direct disbursement of the amount owed from the Financial Creditor to the Corporate Debtor. The NCLT clarified that the transaction should involve a direct relationship between the Financial Creditor and the Corporate Debtor, and any amounts taken by Directors in their personal capacity, even if used for business purposes, would not fall within the definition of 'financial debt'. This reaffirmation underscores the importance of establishing a direct transaction between the parties involved to classify a loan as a financial debt under the Code.

Decision of the Tribunal

- Upholding the decision of NCLT, Chennai Bench, the NCLAT held that the amount is not a 'financial debt' as there is no evidence on record to establish that the amount was directly lent to the Respondent Company.
- The NCLAT observed that the Apex Court in Anuj Jain Interim Resolution Professional for Jaypee Infratech Ltd v. Axis Bank Ltd & Ors¹ has clearly defined the ingredients of a 'financial debt' as defined under Section 5(8) of the Code and observed that there should be a direct disbursement of the amount owed, Financial Creditor to the Corporate Debtor for the amount to be construed as a 'financial debt'. The transaction should be a direct transaction between the Financial Creditor and the Corporate Debtor.
- This Tribunal thus held that amounts taken by their Directors in their personal capacity, though used for the business purposes of the company, will not fall within the ambit of the definition of 'financial debt' as defined under Section 5(8) of the Code.
- Therefore, the e-mails relied upon by the Appellant are of no significance.

Mukesh Kumar v. Ambrane India Pvt Ltd

National Company Law Appellate Tribunal, Principal Bench, New Delhi | Order dated July 05, 2023 | Company Appeal (AT) (Ins) No. 659/2022

Background facts

- A company, Ambrane India Pvt Ltd (**Financial Creditor**), lent a sum of INR 1.01 crore to MP Promoters Pvt Ltd, the Corporate Debtor. The loan was to be repaid on or before March 31, 2018.
- As the Corporate Debtor failed to repay the loan by the stipulated date, the Financial Creditor filed a petition under Section 7 of the IBC before the NCLT, New Delhi, which was admitted by the NCLT, thus, initiating the CIRP in respect of the Corporate Debtor.
- Aggrieved by the said admission Order, the present Appeal was preferred on the ground that there was no written agreement regarding the loan and as such there was no financial debt and the application was liable to be outrightly rejected. He contended that the amount was advanced for an investment.

Issues at hand?

- Whether in the absence of a written agreement regarding claim of sanctioning loan to the Corporate Debtor can there be a financial debt?
- Whether on the perusal of the balance sheet of the Corporate Debtor the money advanced was taken against property?

Decision of the Tribunal

- The NCLAT, after perusal of the material available on record, was of the opinion that the Order of the NCLT is correct and the same does not require any interference.
- The Appellate Tribunal observed that while there was no direct agreement for the sanction of a loan between the Appellant and the Respondent Company, however, there were numerous circumstances which showed that Financial Creditor had been approached by the Directors of the Respondent Company and the loan was given to the Corporate Debtor.
- NCLAT relied on the Board Resolution of the Financial Creditor which made clear that the inter-corporate loan under Section 186 of the Companies Act, 2013 was granted to the Corporate Debtor and it also contained repayment date along with interest.
- The Tribunal opined that the reliance placed on the balance sheet of the Corporate Debtor that it was an advance against the property is liable for rejection only as no inference could be drawn that INR 1,01,00,000 was taken as advance against one property and not loan. It held that the balance sheet of the Corporate Debtor on record reflected the loan amount and also the interest amount.
- Examining the language of Section 7 of the IBC closely, the NCLAT also held that only if the NCLT is rejecting an application under Section 7, detailed reasons are required to be assigned. It thus inferred that if an application fulfils the criteria of Section 7 and the NCLT therefore decides to admit the same, there is no requirement for assigning detailed reasons.

HSA Viewpoint

The NCLAT upheld the provision of IBC which says that for admission of an application there has to be an existence of debt and default and if any application meets such requirement it has to be admitted by the Adjudicating Authority and for any rejection reason has to be assigned. The NCLAT followed the provisions of the IBC in letter and spirit which says that admission of an application is the rule and rejection is an exception.

¹ Civil Appeal Nos. 8512-8527 of 2019

Dr Ravi Shankar Vedam v. Tiffins Barytes Asbestos and Paints Ltd

National Company Law Appellate Tribunal, Chennai | Order dated June 13, 2023 | T.A. (AT) No. 134/2021
Company Appeal (AT) (Insolvency) No. 653/2019

Background facts

- The present appeals have been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 against the orders passed by the National Company Law Tribunal, Chennai in MA/179/2019 and MA/120/2019 in CP/39/IB/2018.
- The Appellant sought various reliefs, including a forensic audit of the books of accounts of the Corporate Debtor and a restraint on approving the Resolution Plan until the disposal of the application. The Adjudicating Authority dismissed both applications.
- The Adjudicating Authority noted that MA/179/2019 was filed by the Resolution Professional seeking the approval of the Resolution Plan, and the plan was approved on June 12, 2019, with Embassy Property Developments Pvt Ltd being voted as the successful resolution applicant.
- The objections raised by the Appellant included allegations of violation of principles of natural justice, invalid constitution of the committee of creditors, and the need for a forensic audit of transactions related to the Corporate Debtor.
- As both appeals dealt with common facts and issues, they were disposed of by a common order.

Issue at hand?

- Whether a shareholder of the Corporate Debtor has the locus standi to challenge the Resolution Plan?

Decision of the Tribunal

- The NCLAT emphasized on the scheme of the IBC relying on the difference between the CIRP and the Liquidation process and how the interests of the shareholders differ majorly in the two. While in liquidation, shareholders have the right to file a claim and participate in the Stakeholders committee, during the CIRP, shareholders of the Corporate Debtor are excluded from representation, participation or voting.
- Reading the Explanation to Section 30(2) of the IBC purposively, the NCLAT held that in terms of the said Explanation, shareholders of the Corporate Debtor are deemed to have given their approval to the Resolution Plan.
- The NCLAT also focused on the Creditor-in-Control model of our insolvency system, as opposed to Debtor-in-Possession and emphasizes that during the CIRP of a Corporate Debtor, no action or claim taken by any shareholder of the Corporate Debtor would be maintainable.
- The Appellate Tribunal opined that conferring the right to challenge a Resolution Plan upon shareholders of the Corporate Debtor would be contrary to the foundational principles of the IBC.
- Observing thus, in view of the facts and circumstances, the NCLAT upheld the decision of the NCLT approving the Resolution Plan and dismissed the present Appeals.

HSA **Viewpoint**

The NCLAT in upholding the approval of the Resolution Plan and disallowing a shareholder of the Corporate Debtor from raising objections to the Plan has ruled in adherence to the scheme of the IBC, the principles upon which it is based and the Creditor-in-Control approach of the IBC. In ensuring that no shareholder in the Corporate Debtor attempts to frivolously thwart the process of the successful resolution of the Corporate Debtor, the NCLAT has decided to keep such objections out of its door.

Edelweiss Asset Reconstruction Company Ltd v. Mr. Anuj Jain, RP of Ballarpur Industries Ltd

National Company Law Appellate Tribunal, New Delhi | Judgment dated July 04, 2023 | Company Appeal (AT) (Insolvency) No. 517 & 518 of 2023

Background facts

- Yes Bank Ltd provided term loans to BILT Graphic Paper Products Ltd (BGPPL) on two occasions in 2015 and 2016.
- To secure these loans, Ballarpur Industries Ltd, the Corporate Debtor mortgaged its immovable property in Choudwar, Orissa in favor of Yes Bank. Additionally, a Corporate Guarantee was executed by the Corporate Debtor to secure one of the term loans. The debt and securities related to BGPPL were later assigned to Edelweiss Asset Reconstruction Company Ltd (EARCL).
- Subsequently, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor. The Appellant, EARCL, filed a claim as a secured Financial Creditor, but the claim was rejected by the Resolution Professional, citing the absence of any default by BGPPL. Appellant did not challenge this rejection, or the nominal value of INR 1 allotted to their claim.
- A Resolution Plan submitted by Finquest Financial Solutions Pvt Ltd was approved by the CoC of the Corporate Debtor on April 14, 2022 with 88% voting share. The plan included the sale of land, and the proceeds were to be provided to the Financial Creditors, who are members of the CoC of the Corporate Debtor.

- The Appellant, who held a secured interest in the land and had previously filed a claim during the CIRP saw that its claim was admitted under the category of Other Creditors with a nominal value of INR 1.
- Consequently, the Appellant filed an application seeking the rejection of the revised Resolution Plan submitted by Finquest Financial Solutions Pvt Ltd, along with other prayers.
- The Adjudicating Authority rejected the IA filed by the Appellant and, on the same date, approved the Resolution Plan. Dissatisfied with both of these orders, the Appellant filed the present Appeals.

Issues at hand?

- Whether a Resolution Plan can include assets of the Corporate Debtor secured in favour of third parties?
- Whether the consent of such creditors is required before the approval of such a Resolution Plan?

Decision of the Tribunal

- The NCLAT upheld the decision of the NCLT and dismissed the present Appeals, holding that a third-party security holder like the Appellant is equally bound by the provision of moratorium in terms of Section 14(1)(c) of the IBC and cannot claim any enforcement of security interest in the CIRP of the Corporate Debtor.
- Relying on the decision of the Supreme Court in *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors*², the NCLAT reiterated the position of law that Sections 52 and 53 of the IBC cannot be made applicable during the CIRP and the same finds application only during liquidation.
- The NCLAT placed reliance on Regulation 37 of the CIRP Regulations which provides that the Resolution Plan can provide for the sale of all or part of the assets whether subject to any security interest or not. The latter part of the Regulation makes it clear that the assets of the Corporate Debtor, irrespective of any third-party creditors' security interest, can be dealt with, modified or satisfied in the Resolution Plan.
- The NCLAT observed that in the present case, the security interest of the Appellant formed part of the CIRP of the Corporate Debtor since the date of the Appellant's filing of the claim, i.e., February 05, 2020 and the acceptance of the Appellant in the category of Other Creditor, which was never challenged by the Appellant.
- Holding thus, the NCLAT dismissed the Appeals, stating the same to be lacking in merit. The NCLAT upheld the decision of the NCLT ruling that no prior consent of the Appellant was required before including the assets of the Corporate Debtor in the Resolution Plan.

HSA

Viewpoint

The decision of the NCLAT highlights the supremacy of the commercial wisdom of the CoC, even in cases where it leads to the extinguishment of a creditor's security interest. This makes the distinction between the treatment of security interest in CIRP and liquidation stronger and even more pronounced. However, the law on this is far from settled, and is likely to be finally settled by the Supreme Court.

² Company Appeal (AT) (Insolvency) No. 03 of 2019



RECENT DEALS

Going concern sale of Divine Vidyut Ltd

- The NCLT, Mumbai Bench, vide an Order dated May 17, 2023 approved the Resolution Plan submitted by Innova Captab Ltd, the Successful Resolution Applicant (**SRA**) in the CIRP of Sharon Bio-Medicine, the Corporate Debtor.
- The NCLT, Kolkata Bench vide Order dated June 15, 2023 allowed the closure of liquidation process of Divine Vidyut Ltd the Corporate Debtor, as the Corporate Debtor was sold as a going concern to Shah Sponge and Power Ltd, under Regulation 32A read with Regulation 45(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**CIRP**) vide order dated September 19, 2019 on the admission of a petition filed by Punjab National Bank under Section 7 of the IBC bearing CP (IB) No.891/KB/2018. Thereafter, vide Order dated January 26, 2021, the liquidation of the Corporate Debtor was initiated, and Mr. Rajesh Kumar Agrawal was appointed as the Liquidator.
- The Liquidator constituted the Stakeholders Consultation Committee (**SCC**) of the Corporate Debtor after verification of claims on May 07, 2021.
In the first SCC meeting held on May 20, 2021, all the stakeholders consented to the sale of the Corporate Debtor as a going concern as per the Regulation 32(e) Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016.
- In the third SCC meeting, the reserve price for the sale of the Corporate Debtor was set at INR 32 crore. Accordingly, the Sale Notice was published on July 05, 2021 and Expression of Interest (**EoI**) was received from 4 participants. However, no EMD was received till the last date.
- After multiple failed e-auctions, in the 14th SCC meeting held on March 16, 2022, the reserve price was reduced to INR 22 crore. Accordingly, a fresh sale notice was published on March 21, 2022.
- In the e-auction held on April 29, 2022, Shah Sponge and Power Ltd was declared as the successful bidder. Accordingly, Letter of Intent (**LoI**) was issued to the successful bidder on May 02, 2022, which was unconditionally accepted.
- The entire sale consideration was paid by the successful bidder within 90 days, following which the Liquidator issued the sale certificate and handed over the physical possession of assets of the Corporate Debtor to the Successful Bidder on September 08, 2022.
- Consequently, the amount received was distributed among the stakeholders of the Corporate Debtor. Finally, the Liquidator submitted his final report under Regulation 45 of the Liquidation Process Regulations and Form H, i.e., Compliance Certificate under Regulation 45(3) of the Liquidation Process Regulations dated December 27, 2022.

Resolution of DS Kulkarni Developers

- The NCLT, Mumbai Bench vide Order dated June 23, 2023 approved the Resolution Plan submitted by the Consortium of Ashdan Properties Pvt Ltd, Classic Promoters and Builders Pvt Ltd and Atul Builders, the Successful Resolution Applicant (**SRA**), in the CIRP of DS Kulkarni Developers Ltd, the Corporate Debtor.
- Vide Order dated September 26, 2019, the NCLT, Mumbai Bench directed the initiation of the CIRP of the Corporate Debtor and appointed Mr. Manoj Kumar Agarwal Interim Resolution Professional (**IRP**). Pursuant thereto, the IRP constituted the Committee of Creditors (**CoC**) on October 18, 2019 and in the 1st CoC meeting held on October 25, 2019, the IRP was confirmed as the Resolution Professional of the Corporate Debtor.
- Form G was published in newspapers on December 10, 2019, December 27, 2019, February 27, 2020 and March 16, 2021. The last date for submitting the Expression of Interest (EoI) as per latest Form G published on March 16, 2021 was April 22, 2021. However, pursuant to the requests of the Prospective Resolution Applicants (**PRA**), the same was extended till May 22, 2021. Pursuant to this, Resolution Plans were received from total 3 PRAs: (i) Mantra Properties and Developers Pvt Ltd, (ii) Consortium of Ashdan Properties Pvt Ltd, Classic Promoters and Builders Pvt Ltd and Atul Builders, and (iii) Consortium of Hemendra D Shah, Kanhaiyalal H Matani and Ghanshyam J Sukhwani.
- The CoC, in its 25th meeting held on July 13, 2021 resolved to approve the Resolution Plan of the SRA by a majority vote of 83.37%. Subsequently, the SRA issued a Performance Bank Guarantee of INR 25 crore dated August 21, 2021.
- The perusal of the Resolution Plan of the SRA shows that the plan provides for the total payment of an amount of INR 826.30 to all the stakeholders of the Corporate Debtor. An amount of INR 658.76 crore is allocated towards the payment to be made to the Secured Financial Creditors, whereas Homebuyers will be given their respective units against their claimed amount. Further, an amount of INR 161.01 crore is allocated towards the payment to be made to the holders of Secured Debentures. The payment schedule in the Resolution Plan provides for payment to stakeholders in 8 different tranches.
- Relying on the position laid down by the Supreme Court in K Shashidhar v. Indian Overseas Bank³ and Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors⁴, the NCLT, Mumbai Bench observed that the power of judicial review conferred on the Adjudicating Authority under Sections 30(2) and 31 of the IBC is limited and it does not extend to modifying the Resolution Plan which the CoC, in their commercial wisdom, have approved.
- In view of the abovementioned observations, the NCLT, Mumbai Bench held that the Resolution Plan is in accordance with Sections 30(2)(a) to 30(2)(f) of the IBC and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and pronounced the Resolution Plan as approved.

Resolution of Three C Homes Pvt Ltd

- The NCLT, New Delhi, vide order dated June 13, 2023 approved the Resolution Plan submitted by Ace Infracity Developers Pvt Ltd in the CIRP of Three C Homes Pvt Ltd, the Corporate Debtor.
- Vide order dated September 06, 2019, the NCLT admitted the Company Petition bearing IB-432(ND)/2019 filed by Mr. Arun Kumar Sinha, the Financial Creditor, and initiated the CIRP in respect of the Corporate Debtor, thereby appointing Mr. Gaurav Katiyar as an Interim Resolution Professional (**IRP**). Pursuant thereto, the IRP invited claims from the creditors of the Corporate Debtor. The IRP constituted the CoC on January 09, 2020 and the CoC, in its first meeting, approved the appointment of the IRP as the Resolution Professional (**RP**) of the Corporate Debtor, which was confirmed on February 10, 2020.
- The invitation for Expression of Interest (**EoI**) in Form-G was published on March 03, 2020 in Financial Express and Jansatta. Pursuant thereto, the RP received EoIs from four Prospective Resolution Applicants (**PRA**), out of which only two, i.e. Ace Infracity Developers Pvt Ltd and East India Udyog Ltd were considered to be eligible.
- In the fifth meeting of the CoC held on August 10, 2020, the Resolution Plan of the SRA, which was the sole plan found to be compliant with the provisions of the IBC, was tabled for voting and was approved by the CoC with 100% majority. Consequently, the RP of the Corporate Debtor filed I.A.3385/2020 before the NCLT seeking approval of the said Resolution Plan. However, this application was rejected by the NCLT based on certain objections filed by certain homebuyers.

³ [2019] ibclaw.in 08 SC

⁴ Company Appeal (AT) (Insolvency) No. 03 of 2019

- This order of the NCLT was challenged before the NCLAT and vide its order dated July 08, 2021 the NCLAT allowed the Appeal and remanded the application back to the NCLT with directions to consider the Resolution Plan afresh along with the objections to the same.
- After several rounds of litigation involving objections from the Yamuna Expressway Industrial Development Authority (YEIDA) and the Homebuyers Association, the NCLT heard the present application and approved the Resolution Plan of the SRA.
- The perusal of the Resolution Plan of the SRA shows that the plan provides for the total payment of an amount of INR 140.39 crore to the stakeholders of the Corporate Debtor. The Homebuyers, i.e., Financial Creditors in a class will be given their respective flats. Further, an amount of INR 70.81 crore is proposed to be paid to the YEIDA Authority.
- The repayment of Operational Creditors (other than Workman & Employee) as per Section 30(2)(b) of the Code has been assumed to be NIL. The Resolution Applicant has not made any provision for payment to other creditors in the Resolution Plan but will settle this liability in accordance with the law.
- Relying on the judgment of the Supreme Court in Vallal RCK v. Siva Industries and Holdings Ltd & Ors⁵, the NCLT, New Delhi Bench observed that the commercial wisdom of the CoC is paramount and the same cannot be evaluated or analyzed by the Adjudicating Authority.
- In view of the above observation, the NCLT held that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and pronounced the Resolution Plan as approved.

Resolution of Indu Projects Ltd

- The NCLT, Hyderabad Bench vide order dated July 05, 2023 approved the Resolution Plan submitted by the consortium of Mr. B Subba Reddy and Mr. C. Venkateswara Reddy, Successful Resolution Applicant (SRA) in the CIRP of Indu Projects Ltd, the Corporate Debtor.
- Vide order dated February 25, 2019, the NCLT had initiated the CIRP of the Corporate Debtor. During the CIRP, two Resolution Plans were received and put for vote. In the 11th CoC meeting of the Corporate Debtor, a plan submitted by Shyamraju & Company was approved by the CoC and declared as the highest bidder. However, as the plan could not receive the requisite 66% vote from the CoC, the plan was deemed to be rejected.
- Consequently, the Applicant, i.e., Resolution Professional of the Corporate Debtor filed an application for liquidation under Section 33 of the IBC. However, the proceeding was stayed due to Covid-19 Pandemic. Finally, when a fresh CIRP procedure was conducted, and the plan submitted by Earthin Projects Ltd in consortium with K Ramachandra Rao was approved with 100% majority. The plan also received the NCLT's nod. However, due to failure of the Resolution Applicant to fulfil the conditions under the plan, the CIRP was conducted afresh yet another time. During the said CIRP, 8 EoIs were received, and the plan submitted by B. Subba Reddy in consortium with C. Venkateswara Reddy, was approved after due deliberations, by 100% voting.
- A perusal of the Resolution Plan shows that the plan provides for the total settlement amount of INR 501 crore. Under the plan, an amount of INR 5.99 crore is to be paid towards the dues of the Operational Creditors. Further, an amount of INR 394 crore is to be paid towards the dues of Financial Creditors.
- The Resolution Plan proposes INR 1 crore as CIRP cost and INR 18.43 lakh towards payment of government dues. In accordance with the timeline stipulated in the Plan, the implementation of the Plan is to be complete within 90 days from the date of the approval of the Plan by the NCLT.
- After the approval of the Plan by the CoC, the Resolution Professional issued a Letter of Intent dated February 04, 2023 to the consortium and the consortium furnished a performance bank guarantee of INR 29.4 crore dated February 09, 2023 along with a INR 10 crore of earnest money deposit, thus totaling INR 39.4 crore.
- Relying on the judgment of the Supreme Court in K Shashidhar v. Indian Overseas Bank (supra), Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors (supra) and Vallal RCK v. Siva Industries and Holdings Ltd & Ors (supra), the NCLT, Hyderabad Bench observed that the commercial wisdom of the CoC is paramount and the same cannot be evaluated or analyzed by the Adjudicating Authority.
- In view of the above facts and circumstances, the NCLT, Hyderabad bench pronounced the Resolution Plan as approved and directed the RP to supervise the implementation of the Resolution Plan and file status of its implementation before the Authority from time to time.

⁵ Civil Appeal Nos. 1811-1812 of 2022



COMPANIES ADMITTED TO INSOLVENCY IN JUNE 2023

Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	10i Commerce Service Pvt Ltd	Bengaluru	E-Commerce
2	ABP Apparels Pvt Ltd	Ahmedabad	Manufacturing of textile
3	Adoration Ceramica Pvt Ltd	Ahmedabad	Manufacturing flooring
4	AL Nafees Frozen Food Exports Pvt Ltd	New Delhi	Wholesale distribution
5	Amtech Project & Product Pvt Ltd	Chandigarh	Manufacturing and trading
6	Array Land Developers Pvt Ltd	Chennai	Wind farm projects
7	Attivo Economic Zone (Mumbai) Pvt Ltd	Kolkata	Real estate
8	Bajwa Developers Ltd	Chandigarh	Real Estate
9	BD & P Hotels (India) Pvt Ltd	Mumbai	Hotels and motels
10	Blossom Grocery and Foods India Pvt Ltd	Mumbai	Trading
11	Call Express Constructions Pvt Ltd	Chennai	Construction
12	Calyx Lenora Realty LLP	Mumbai	Construction
13	Chaitanya Neer Jal Pvt Ltd	Mumbai	Food & Beverage
14	Cyperus Multitrade Pvt Ltd	Mumbai	Trading
15	Dadheech Infrastructures Pvt Ltd	Kolkata	Mining and quarrying
16	Danesita Phadnis Food Industries Ltd	Mumbai	Manufacturing of beverages
17	DB Realty Ltd	Mumbai	Real Estate
18	Dilshad Trading Co Pvt Ltd	Mumbai	Wholesaler
19	Epitome Residency Pvt Ltd	Mumbai	Construction
20	Evershine Wood Packaging Pvt Ltd	Chennai	Manufacturing of wood packaging
21	Fossil Logistics Pvt Ltd	Chennai	Transportation
22	Frugal Developers Pvt Ltd	New Delhi	Construction
23	G.C.A. Marketing Pvt Ltd	Chandigarh	Retail
24	Geetapuram Port Services Ltd	Mumbai	Transportation
25	Indian Clothing League Pvt Ltd	Chandigarh	Manufacturing of textile products
26	Jiva Steels Pvt Ltd	Hyderabad	Manufacturing of metals and chemicals
27	JMS Logistics and Express Pvt Ltd	Mumbai	Transportation
28	Khadkeshwar Hatcheries Ltd	Mumbai	Poultry farming
29	Kissan Riceland Pvt Ltd	Chandigarh	Agricultural
30	Kotsons Pvt Ltd	New Delhi	Power generation equipment
31	Las Cargo Pvt Ltd	Mumbai	Air cargo
32	Limeswood Developers Pvt Ltd	Chandigarh	Real estate
33	Macin Remedies India Ltd	Chandigarh	Manufacturing of metals and chemicals
34	Macro Infra Contractors Pvt Ltd	Jaipur	Construction
35	Madhuvan Tieup Pvt Ltd	New Delhi	Trading
36	Magic Express Technology Pvt Ltd	Mumbai	Information Technology
37	Magpie Global Houseware Pvt Ltd	New Delhi	Manufacturing of kitchenware
38	Maharashtra Ayurved Center Pvt Ltd	Mumbai	Healthcare activities
39	Malola Management Consulting Services Pvt Ltd	Chennai	Consultancy services
40	Manglam Apartments Ltd	New Delhi	Real Estate
41	Mantri Infrastructure Pvt Ltd	Bengaluru	Real Estate

42	Marine Drive Hospitality and Realty Pvt Ltd	Mumbai	Real Estate
43	Mindlogicx Infratec Ltd	Bengaluru	Software
44	Mondo Culinary Pvt Ltd	Mumbai	Managing hotels
45	Mytrah Energy (India) Pvt Ltd	Hyderabad	Wind and solar farms
46	Nava Healthcare Pvt Ltd	New Delhi	Manufacturing of pharma products
47	Neesa Infrastructure Ltd	Ahmedabad	Construction
48	Nirmal Cars Pvt Ltd	Jaipur	Motor vehicle parts
49	Orbit Ayas Pvt Ltd	Mumbai	Manufacturing of metals and chemicals
50	Orient Newsprint Ltd	Ahmedabad	Manufacturing of metals and chemicals
51	PCK Corporation LLP	Mumbai	Retail
52	Perfect Engineering Products Ltd	Mumbai	Metal products
53	Pune Buildtech Pvt Ltd	Mumbai	Construction
54	Rao Edusolutions Pvt Ltd	Mumbai	Social services
55	Reliable Cashew Company Pvt Ltd	Chennai	Wholesale of agricultural raw material
56	Reliance Innoventures Pvt Ltd	Mumbai	Research and experiments
57	SAARP Non Woven India Pvt Ltd	Chennai	Spinning, weaving and finishing of textiles
58	Safintra Roofing (India) Ltd	Mumbai	Construction Material
59	Sequel Buildcon Pvt Ltd	New Delhi	Real Estate
60	Shiva Shakti Grains (India) Pvt Ltd	Chandigarh	Manufacturing of food products
61	Shivam Parivar Developers Pvt Ltd	Mumbai	Construction
62	Shore Dwellings Pvt Ltd	Bengaluru	Real Estate and construction
63	Spectra Industries Ltd	Mumbai	Manufacturing of metal components
64	Sri Lakshmi Saraswathi Pvt Ltd	Chennai	Manufacturing of machinery
65	Supreme Bungalows Pvt Ltd	Mumbai	Construction
66	Surya-Landmark Developers Pvt Ltd	Mumbai	Real Estate
67	Swapnil Promoters and Developers Pvt Ltd	Mumbai	Real Estate
68	Syntex Trading & Agency Pvt Ltd	Mumbai	Trading
69	Tanishi Tradewell Pvt Ltd	Mumbai	Textile trading
70	Textrade International Ltd	Mumbai	Manufacturing of textile products
71	Trishul Dream Homes Ltd	Chandigarh	Real Estate
72	Tuaman Engineering Ltd	Kolkata	Civil engineering
73	V-Ensure Pharma Technologies Pvt Ltd	Mumbai	Distributor
74	Vikas Multiplex Developers Pvt Ltd	Principal Bench	Construction
75	Viola Resorts Pvt Ltd	Mumbai	Hospitality
76	Viraaj Projects (India) Pvt Ltd	Mumbai	Infrastructure solutions and construction
77	VR2 Land Development Pvt Ltd	Mumbai	Real estate
78	Welfare Infrastructure Pvt Ltd	Jaipur	Real Estate
79	Yash Kirti Tours and Travels Pvt Ltd	Ahmedabad	Transportation

Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Atharva Metal Pvt Ltd	Mumbai	Manufacturing of metals and minerals
2	Bush Tea Company Pvt Ltd	Kolkata	Manufacturing of food items
3	Cantronics Office Equipment Pvt Ltd	Mumbai	Supplying office equipment's
4	Elena Power and Infrastructure Pvt Ltd	New Delhi	Construction
5	G.I. International Pvt Ltd	Kolkata	Manufacturing of machinery and equipment
6	Goel Jewellery & Mart Pvt Ltd	New Delhi	Manufacturing of jewelry
7	Indusar Global Ltd	Mumbai	Manufacturing of steel products
8	Jewel Garments Pvt Ltd	Chandigarh	Manufacturing of textile products
9	Lindsay International Pvt Ltd	Kolkata	Manufacturing of textile products
10	M.K. Printech Pvt Ltd	New Delhi	Publishing House
11	Maeksin Shipping Company Pvt Ltd	Kolkata	Transportation
12	Monotona Tyres Ltd	Mumbai	Manufacturing of tyres
13	Opal Asia (India) Pvt Ltd	Mumbai	Logistics
14	Rajprotim Agencies Pvt Ltd	Kolkata	Trading
15	RNM Infra Pvt Ltd	Kolkata	Construction
16	Rudrasiva Infracon Pvt Ltd	Ahmedabad	Construction
17	Sabitri Industries Pvt Ltd	Cuttack	Auxiliary transport
18	Shreeom Prime Foods Pvt Ltd	Jaipur	Manufacturing of food items
19	Sical Iron Ore Terminals Ltd	Chennai	Mining and quarrying
20	Simtel Trading Corporation Pvt Ltd	Kochi	Retail Trade
21	Temple Leasing and Finance Ltd	New Delhi	Financial Services
22	Texorange Corporation Ltd	Mumbai	Manufacturing of textile products
23	Thesaurus Project Pvt Ltd	Kochi	Civil engineering
24	Way 2 Health Diagnostic Pvt Ltd	Mumbai	Healthcare activities

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