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ICSI IIP

INSOLVENCY AND BANKRUPTCY JOURNAL

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INSTITUTE OF INSOLVENCY PROFESSIONALS

A wholly owned subsidiary of ICSI and registered with IBBI
(Formerly known as ICSI Insolvency Professionals Agency)

'ICSI House', 3rd Floor, 22, Institutional Area,
Lodhi Road, New Delhi - 110 003

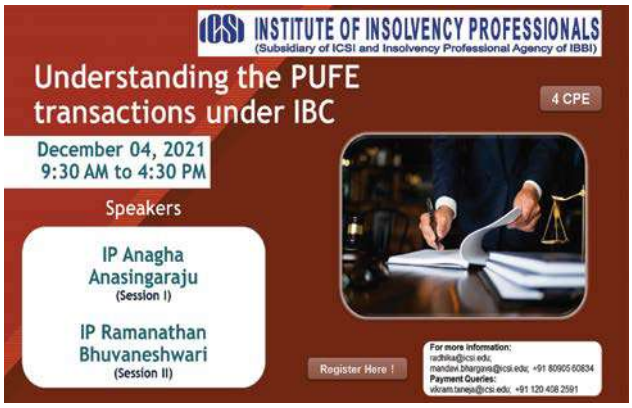
NEWS FROM THE INSTITUTE

◆ Pre-Registration Educational Course

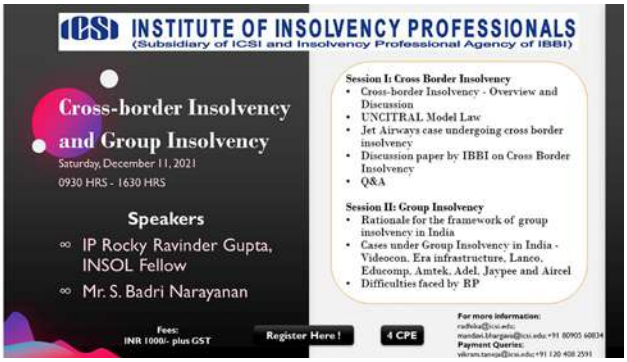
Pursuant to Regulation 5(*b*) of the IBBI (Insolvency Professionals) Regulations, 2016, individuals are eligible to register themselves as Insolvency Professionals (IP) only after undergoing through the mandatory 50 hours Pre-Registration Educational Course from an Insolvency Professional Agency after his/her enrolment as a Professional Member.

ICSI IIP jointly with the other three Insolvency Professional Agencies conducted 2 batches of pre-registration educational courses from 3rd December to 9th December, 2021 and 23rd December to 29th December, 2021.

◆ Workshop on Understanding the PUFE transactions under IBC on 4th December 2021



◆ Workshop on 'Cross-border Insolvency and Group Insolvency' on 11th December, 2021



◆ Roundtable discussion

ICSI IIP organised roundtable discussion on 'Cross-Border Insolvency under IBC' on 13th December, 2021

◆ Seminar

ICSI IIP organised seminar on '5 Year Journey of IBC and Way Forward' on 18th December, 2021

◆ Webinar

ICSI IIP jointly with National E-Governance Services Limited (NeSL) organised webinar on 'Platform for Distressed Assets (PDA) an integrated technology solution for IPs' on 21st December, 2021

◆ Refresher

ICSI IIP organised refresher on 'Landmark SC Judgments under IBC in 2021' on 25th December, 2021

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At a Glance

No. 12 | Pg. 1-100 | December 2021

Section 12 of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Time limit for completion of - Whether entire resolution process has to be completed within period stipulated under section 12 and any deviation would defeat object and purpose of providing such time limit - Held, yes - Whether where time-limit for completion of resolution process had been condoned in view of various litigations pending between parties and in peculiar facts and circumstances of case, any further delay inimplementation of approved resolution plan submitted by successful resolution applicant, which had been approved by Adjudicating Authority and appeal against which had alsobeen dismissed would defeat very object and purpose of providing specific mandatory time-limit under section 12 for completion of insolvency resolution process and, therefore, all concerned parties to approved resolution plan and connected with implementation of approved resolution plan were directed to complete implementation of approved

resolution plan and any lapse on part of any parties in implementing approved resolution plan within stipulated time would be viewed very seriously - Held, yes (Para 10)

- **ES Krishnamurthy *v.* Bharath Hi Tech Builders (P.) Ltd.**
  (2021) 133 taxmann.com 159 (SC) • P-477

Section 60, read with section 7, of the Insolvency and Bankruptcy Code, 2016 - Corporate person's Adjudicating Authorities - Adjudicating Authority - Whether Adjudicating Authority (NCLT) is empowered only to verify whether a default has occurred or has not occurred and based upon its decision, Adjudicating Authority must then either admit or reject an application under section 7(5) - Held, yes - Whether Adjudicating Authority must either admit application under clause (a) of sub-section (5) of section 7 or it must reject applicationunder clause (b) of sub-section (5) of section 7; statute does not provide for Adjudicating Authority to undertake any other action, but for two choices available in accordance with section 7(5) - Held, yes - Whether Adjudicating Authority cannot compel a party to proceedings before it to settle a dispute - Held, yes (Paras 24 and 27)

- **Ngaitlang Dhar *v.* Panna Pragati Infrastructure (P.) Ltd.**
  (2021) 133 taxmann.com 219 (SC) • P-482

Section 30, read with section 61, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Submission of - Whether where Prospective Resolution Applicant (PRA) adopted a very casual and non-serious approach in failing to rectify anomalies in his bid despite being granted extensions of time and absenting himself from meeting of CoC on day which was his final opportunity in neck of180 days statutory CIRP deadline and merely sought further extension of time, CoC wasfully justified in its collective commercial wisdom in deciding to exclude PRA from further bidding process and in accepting highest bid from remaining PRAs - Held, yes - Whether such decision of CoC, in its commercial wisdom, could not be faulted even when 180 days deadline was subsequently extended by 90 days by NCLT since highest bid had been finalised within 180 days time and extension application was made to NCLT before 180 days deadline expired - Held, yes - Whether procedure adopted by RP as well as CoC was fair, transparent and equitable - Held, yes - Whether opinion expressed by CoC after due deliberations in meetings through voting, as per voting shares, is collective business decision and is non-justifiable, except on limited grounds as are available for challenge under section 30(2) or 61(3) - Held, yes - Whether therefore, NCLAT was not justified in setting aside NCLT's orders declining more time to PRA and accepting highest bidderselected by CoC especially when successful RA had paid off all creditors and company had become a going concern - Held, yes (Paras 27, 29, 30, 31, 35, 37 and 38)

- **Ferro Alloys Corpn. Ltd. *v.* State of Odisha**
  (2022) 135 taxmann.com 106 (Orissa) • P-488

Section 31 of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Whether section 31(1) makes it clear that once approved resolution plan is in place, approved by CoC, it shall be binding on corporate debtor and its employees, members, creditors including Central Government and StateGovernment - Held, yes - Whether therefore, where petitioner underwent a CIRP in which a Resolution Plan had been approved, demands raised against petitioner by Officer of State Government for purpose of issuance of Mining Dues Clearance Certificate (MDCC) and renewal of trading licence which pertained to period prior to Plan Effective date would standautomatically extinguished in terms of approved resolution plan- Held, yes - Whether thus, adirection was to be issued for refund of amounts paid by petitioner under protest forpurpose of issuance of MDCC and renewal of trading licence or adjust amount so paid against dues payable by it - Held, yes (Paras 24, 32, 33 and 34)

- **Nitin Jain Liquidator PSI Ltd. *v.* Enforcement Directorate**
  (2021) 133 taxmann.com 184 (Delhi) • P-492

Section 32A of the Insolvency and Bankruptcy Code, 2016, read with section 5 of the Prevention of Money Laundering Act, 2002 - Liability for prior offences, etc. - Whether section 32A(2) of IBC only protects property of corporate debtor in liquidation from provisional attachment by ED under section 5 of PMLA in respect of money laundering offences committed prior to commencement of CIRP - Held, yes - Whether however, it does not make Liquidator of corporate debtor immune from answering to requests for information that may be directed towards him by investigating authorities under PMLA - Held, yes (Para 100)

- **Axis Bank Ltd. *v.* Value Infracon India (P.) Ltd.**
  (2022) 135 taxmann.com 109 (NCLAT-New Delhi) • P-502

Section 5(8), read with section 7, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Financial debt - Whether where appellant/bank sanctioned housing loans to some of home buyers/allottees who had purchased flats/units in a residential project floated by corporate debtor, since liability to repay home loan was on individual home buyers, appellant/bank could not be considered as 'secured financial creditor' - Held, yes (Paras 16-17)

- **Union Bank of India *v.* Ms. Vandana Garg**
  (2022) 135 taxmann.com 107 (NCLT - Mum.) • P-506

Section 30, read with section 53, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Submission of - Whether resolution plan once approved by Adjudicating Authority shall stand frozen and binding on all stakeholders including financial creditors - Held, yes - Whether section 30(2)(b) provides for payment of debts of dissenting financial creditors in such manner as may be specified by Board, which shall not be less than amount to be paid to such creditors in accordance with section 53(1) in event of liquidation - Held, yes -Whether Explanation 1 to section 30(2)(b) further clarifies that distribution in accordance with provisions of this clause shall be fair and equitable to such creditors - Held, yes - Whether where invocation of bank guarantee was as per terms of resolution plan and decision to include invoked amount of bank guarantee to fund-based debts was a commercial decision of CoC, any increase in claim amount of assenting financial creditors due to invocation of such bank guarantee could not be a ground for challenge by dissenting financial creditors on grounds of discrimination - Held, yes (Paras 6, 7 and 9)

- **Rajasthan State Road Development & Construction Corporation Ltd. *v.* Vasundhra Gupta**
  (2022) 135 taxmann.com 111 (NCLAT-New Delhi) • P-512

Section 60 of the Insolvency and Bankruptcy Code, 2016 - Corporate person's Adjudicating Authorities - Adjudicating Authority - Whether residuary jurisdiction of Adjudicating Authority cannot be invoked if termination of a contract is based on grounds unrelated to Insolvency of corporate debtor - Held, yes - Appellant-Corporation awarded work order to corporate debtor for construction of a building - Before initiation of CIRP, several extensionswere granted to corporate debtor for completion of work, however, corporate debtor was not able to complete work - Thus, Corporation issued order for cancellation/termination of said work order - There was nothing on record to indicate that termination of work order was motivated by insolvency of corporate debtor - Corporation had issued notice of termination to corporate debtor in exercise of power given in clauses 59 and 60 of said work order - Whether therefore, NCLT did not have any residuary jurisdiction to entertain present contractual dispute which had arisen de hors insolvency of corporate debtor and, thus, in absence of jurisdiction over dispute, NCLT could not have imposed stay on operation of termination order - Held, yes (Para 35)

- **Apya Capital Services (P.) Ltd. *v.* Guardian Homes (P.) Ltd.**
  (2022) 135 taxmann.com 105 (NCLAT-New Delhi) • P-515

Section 61, read with sections 7 and 9, of the Insolvency and Bankruptcy Code, 2016 and section 424 of the Companies Act, 2013, read with rule 11 of National Company Law Appellate Tribunal Rules, 2016 - Corporate persons adjudicating authorities - Appeals and Appellate Authority - Appellate Tribunal had passed an order dated 8-12-2020, admitting application of appellant under section 7 - Applicant submitted that Appellate Tribunal had committed an ex-facie error apparent on fact of record since it had treated applicant as a 'financial creditor' under IBC and application preferred by it before NCLT, as one filed under section 7 of IBC when it was apparent from record and also an admitted case of applicant that he was an 'operational creditor' and had preferred application under section 9 - Accordingly, said judgment of Appellate Tribunal was challenged before Supreme Court, and, Supreme Court dismissed appeal filed by applicant - Thereafter, applicant filed fresh application before instant Appellate Tribunal with a prayer to recall judgment and order dated 8-12-2020 passed by Appellate Tribunal - Whether neither section 424 of Companies Act, 2013, nor rule 11 of NCLAT Rules, 2016 grants power to NCLAT to recall an orderpassed by it after said order has been challenged before Supreme Court, same being dismissed - Held, yes - Whether power to recall judgment is not permitted in IBC - Held, yes Whether therefore, application filed by applicant was to be dismissed as not maintainable - Held, yes (Paras 13 and 15)

P.K. MALHOTRA
ILS (Retd.) and Former Law Secretary (Ministry of Law & Justice, Govt. of India)

From Chairman's Desk

Dear Professional Members,

It is always a pleasure to connect with you all through different mediums, especially through the medium of our regular monthly journal. I thank you for your continued trust, encouragement and unequivocal support to your own institute (ICSI IIP). I appreciate the fact that the Institute is emerging stronger and healthier with each passing month and year and I do have full faith in our dedicated team which is working with the best of its capabilities in the direction of achieving its objectives.

The judicial developments that take place have been one of the core area of interest for me, and when it comes to our current Insolvency and Bankruptcy law regime, the interest is all the more, since, IBC is one of the most landmark and reformative economic legislations in the Indian legislative history. We have a catena of judgments delivered by Hon'ble SC which have not only clarified the legal provisions, but have also underlined and endorsed the legislative wisdom behind them. The functioning of our legal/Court system has been found on the principle and practice of *stare decisis* which essentially means *to stand by the decided matters and not to disturb them*. In legal parlance, it is termed as the *doctrine of precedent*, which refers to a judicial practice, wherein, on a particular point of law, the Courts are required to follow the

same judicial decisions/principles as rendered in earlier case/s when the same point relating to that law is being presented before it in a subsequent case. The rationale behind the principle is clear. It attempts to achieve a three-fold objective, which is, *firstly*, to promote confidence amongst the subjects to plan their economic and social transactions; *secondly*, to eliminate a litigant's tendency to re-approach the law courts looking to re-agitating a legal issue/question which has already been decided; and *thirdly*, to enhance public confidence in stability, certainty, and predictability of the judicial system *vis-à-vis* interpretation of the law/legal provisions. These are the foundations on which the doctrine is being found, and they assure that with *ceteris paribus* (*i.e.*, in case of all other things being equal), a legal system shall resolve a legal issue in a similar manner, regardless of a change in the person/judge adjudicating the issue/matter. Thus, it discourages successive re-litigation on a legal issues which has already been authoritatively decided in a previous case.

The doctrine finds its place in Article 141 of the Constitution of India which is the *grundnorm* in our nation. The article provides that a law declared by Hon'ble Supreme Court is binding on all law Courts within the territory of India. The doctrine, however, does not work in the reverse direction, *i.e.*, for a case (legal principle) that has been earlier decided (laid down) by a lower court, the higher court can either uphold or modify or even reverse/overrule/distinguish in the same or a different matter before it. There can also cases, wherein, in view of prevailing facts, the Higher Court orders for a prospective overruling, *i.e.*, if, in a case, the Higher Court comes to a conclusion that the existing legal precedent does not hold good in the prevailing conditions and circumstances, then, without disturbing the cases already decided, it adopts a different interpretation which may be required to be adopted only in subsequent cases. Therefore, although the courts would follow the doctrine of precedent in normal circumstances, the higher forums can also overrule an already laid down decision which it believes holds no longer good in view of the new circumstances. It is also important to know that an earlier decision, once overruled, loses its precedent value.

This highlights the need for all the stakeholders to keep themselves abreast of all the judicial developments taking place in a

particular field of law, especially the judgments delivered by Hon'ble Supreme Court of India which declares and has the final word on what is the law of the land. Under the IBC legal framework, the judgments delivered by Hon'ble Apex Court have not only helped in giving a particular shape to this emerging law, but the expositions that have come forth through judicial decisions, have underlined the fact that, apart from statutes and delegated legislations framed thereunder, the *ratio decidendi* incorporated in such decisions are an authoritative source of law.

I also wish to elaborate a bit on the conception of *justice* as evolved through jurisprudence. Jurists like **Salmond** and **Roscoe Pound** have emphasized the importance of *justice* under all legal systems. The essence of legal justice lies in ensuring uniformity and certainty of law and at the same time ensuring the rights and duties duly respected by all. Legal justice represents the collective wisdom of the community which Rousseau called as *General Will* of the people, and as per Salmond, administration of justice means justice according to law.

While framing, execution and administration of law lies in the domain of the State, the ultimate aim thereof is to achieve the ends of justice.

DR. BINOY J. KATTADIYIL
Managing Director
ICSI Institute of Insolvency Professionals

Managing Director's Message

Whatever happens, your commitment to success should not weaken

Dear Professional Members,

We have now approached the end of this year 2021. There have been many challenges that all of us faced in the past period (specifically on economic and health front), but, we are all now geared-up to welcome the new year 2022 with a lot of good wishes and strength for all of us to keep working to bring the desired outcomes that we all envisioned. I am sure that our determination and commitment to keep sowing seeds of hard work, dedication and commitment, success and happiness shall be bestowed on us. The new year is an opportunity for us to see and access as to how far we have travelled in terms of realising our goals. It is also a moment for us to review and renew our ambitions and have a better vision about life. The situation and circumstances that we all have encountered in the past couple of years have restored a sense of balance in

our understanding of what really matters in life and what we ought to accomplish. As an Institute of Professionals, we have travelled the journey and have grown, and it is my great privilege to thank each one of you for being a source of strength!

The legal framework around IBC has evolved through legislative amendments, regulations and judicial interpretation. The consistent emphasis has been to make things more predictable as well as upholding the sanctity of timeliness laid down under the Code. One of the pre-conditions for success of IBC legal framework is that, a resolution plan, once has been submitted by the RA, and discussed with and agreed to *inter se* the RA and the CoC, it must not be allowed to be taken back or nullified by the RA, else, the whole object of the entire process gets defeated. So, the RA cannot say that its resolution plan becomes binding only when it is approved by NCLT under s. 31(1), IBC. In other words, the language of the provision (s. 31(1)) is not open to a construction that a resolution plan remains open to withdrawal (or even modification) even when it has already been approved by the CoC, and is pending to be approved by the AA. The statute, though provides for a mandatory condition of approval by the NCLT to a resolution plan by the RA, it also envisages a certain level of finality before submission (for approval) to the NCLT. In other words, when the negotiations between RA and CoC have already concluded (after CoC's approval), the only condition that remains to be accomplished is NCLT's approval thereof. NCLT, as has been established through a catena of judgments, has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of s. 30(2), IBC. What is to be kept in mind is that the legislation does not provide for any exit route for a successful RA, and therefore, such an action by the RA is clearly proscribed and if the legislature had intended to allow such withdrawals or subsequent negotiations by successful RAs, it would have prescribed specific timelines for the exercise of such an option too. A resolution plan is thus not merely a *contract* between the RA and the CoC, rather, it has a very important place and a sanctity is attached to it under the IBC legal framework, and upholding the procedural design and sanctity of the process is extremely critical to the functioning of the entire process. This becomes extremely important, since *delay,* which is responsible for erosion of value of CD's assets, also contributes to reduction of recovery by the CoC and consequently a loss to the economy at large.

Therefore, the issue as to whether a Resolution Applicant can withdraw or modify its resolution plan, once it has been submitted by the Resolution Professional to the NCLT but before it is approved by the NCLT under s. 31(1) of the Insolvency and Bankruptcy Code, 2016, is something which has been very appropriately addressed by Hon'ble Apex Court in its recent judgment delivered in the matter of *Ebix Singapore Private Limited* v. *Committee of Creditors of Educomp Solutions Limited & Anr.* (Civil Appeal No. 3224 of 2020).

I thank you all once again for your continuous support to all our activities and endeavours. We have been regularly organising different learning activities and have also endeavoured to serve our professional members with the best of our services, but, we shall be grateful if we get your feedback and suggestions on ways to further strengthen our commitment to the present insolvency and bankruptcy law regime in the country. We stand committed to perform to the best of our abilities!

INTERVIEW

ABHISHEK ANAND
B.Com., ACS, LL.B., PGDCL

1. Looking back at these five years of the Insolvency and Bankruptcy Code, 2016, how significantly this regime has shaped the economy?

The Insolvency and Bankruptcy Code is a crucial structural reform and has put creditors in commanding position. It has also empowered individual creditors especially the Home-buyers of real estate projects, even though it has not given the desired results. The Code have been able to rescue distress companies and has helped in unlocking of idle assets thereby help the GDP growth.

As the RBI's 2021 Reports on Trend and Progress of Banking in India states "Even though initiation of fresh insolvency proceedings under the Insolvency and Bankruptcy Code (IBC) of India was suspended for a year till March 2021 and COVID-19 related debt was excluded from the definition of default, it constituted one of the major modes of recoveries in terms of amount recovered. Allowing pre-pack resolution window for MSMEs is expected to assuage the mounting pressure of pending cases before NCLTs, reduce haircuts and improve declining recovery rates."

The Code also safeguards the interest of the various stakeholders through Resolution Plans and it provides better avenues to

revive and safeguard the business of the Corporate Debtor. IBC has shed light on the various *mala fide*/fraudulent/unethical practices of Corporate entities which were detrimental to the interest of creditors and stakeholders.

2. How has your overall experience as an Insolvency Professional been since you are handling quite a number of assignments? What changes are you looking forward to in this already implemented law?

My overall experience as insolvency professional has been quite exciting and challenging at times as being insolvency professional you are required to manage interest of various kind of creditors (banks, individual creditors, operational creditors and statutory authority), also need to handle disgruntled promoters who are hostile at times towards the entire process of insolvency.

The desirable changes to make IBC more robust would be to make time line sacrosanct, to have a fixed time to approve or reject resolution plan by the Adjudicating Authority, utilization of IBC funds for payment to employees of Corporate Debtor and to meet insolvency cost, and longer threshold for look back period for avoidable transaction.

3. Since you are also a Company Secretary and an advocate by profession, how has this helped you in handling the assignments?

Being a Company Secretary and an Advocate by profession has always worked as a boon for handling the assignments as it always brings better understanding of corporate laws as well the court practices. Being Company Secretary helps to understand the corporate practices in depth and provides better understanding of the background of the Corporate Debtor, its financial records, root cause of violation and non-compliances of various provisions of applicable Acts and Laws. Also, being an Advocate, it becomes possible to present the pertinent issues before the Adjudicatory Authority. Also, in a few cases where appointing advocates is not practical due to financial constraint or size of corporate debtor , I handle all the hearings by myself which also saves the funds of the Corporate Debtor and it also mitigates the vacuum between the IPs and Advocates during court hearings.

4. How was your experience of working with the promoters, Board of Directors etc? How do they perceive this insolvency regime?

The promoters and Board of Directors of the Corporate Debtor are major hurdles and most often non-cooperative during the CIR Process and Liquidation Process. The promoters and Board of Directors of the Corporate Debtor not only intervene in the functions of the IPs but also overburden them with various unwarranted and false cases before different forums. In one particular case, the promoters and Board of Directors of the Corporate Debtor managed to delay the Liquidation Process of the Corporate Debtor for 3 long years by one way or another. The promoters and Board of Directors of the Corporate Debtor are generally very assertive and resort to filing various false and vexatious applications

before various judicial forum to delay entire process of insolvency. The promoters of the Corporate Debtor also at times try to intimidate insolvency professionals by putting baseless accusations and allegations against insolvency professionals.

5. One of the major duties of Insolvency professionals is to identify avoidable transactions and seek appropriate reliefs from the Adjudicating Authority. How far filing of these applications have benefitted the corporations under insolvency? Further, what is your take on its implementation success?

In my view filing of application for avoidable transaction has helped in unearthing siphoning off the funds and enhanced creditor recoveries. The creditors to the Corporate Debtor can get better recovery, if insolvency professionals are able to identify these transactions in timely manner. As we have seen in the case of Jaypee Infratech Limited, where the Hon'ble Supreme Court held that such transactions to be avoidable transactions as those were entered for the benefit of a related party as they allowed the parent company to avail a significantly higher amount of lending from a larger number of creditors. The Hon'ble Supreme Court restored certain land parcels, which were given as security against debt owed by related parties of Jaypee Infratech.

The implementation success depends on how quickly Insolvency Professionals can identify avoidable transaction as they do not have tools to identify the avoidable transactions due to complexity of the transactions and non-cooperation of the promoters/ex-management of the Corporate Debtor. Also, taking directions against non-cooperative promoters/ex-management of the Corporate Debtor is time consuming. Further, the look back period mentioned in the Insolvency and Bankruptcy Code somehow helps the promoters/ex-management of the Corporate Debtor as in majority of cases the Corporate Debtors were engaged in avoidance transactions from the past many years. In one of my cases, the Corporate Debtor has allotted flats to related parties in the year 2012 however due to the look back period the same transactions cannot be categorised as Preferential Transaction. Hence, in my suggestion, there shall be no look back period in case of related parties as majority of the Corporate Debtors tend to circulate/siphon/divert funds with the help of related parties.

6. What is your take on the implementation of Pre-packaged Insolvency Resolution Framework for Corporate MSMEs which has been introduced through "The Insolvency and Bankruptcy Code (Amendment) Act, 2021?"

The Pre-packaged Insolvency Resolution Framework for Corporate MSMEs will speed up the insolvency process and provide relief to the MSME sector. Also, the roadblocks will be less as the power of management of the Corporate Debtor will remain with its promoters. The Pre-packaged Insolvency Resolution Framework for Corporate MSMEs will also decrease the burden over Adjudicatory Authority and the business of the Corporate Debtor will run uninterruptedly.

7. What practical challenges are faced by an Insolvency Professional while carrying out the insolvency process which regulators are not aware about?

Insolvency professionals are not able to abide by the timeline mentioned in the Insolvency and Bankruptcy Code, 2016 for various reasons such as pendency of the applications before the Adjudicatory Authority or by various hurdles created by the ex-management, promoters and prospective bidders. Also, the Petitioners or the CoC members are not ready to contribute towards the CIRP and/or Liquidation expenses which makes the job of IPs challenging.

8. Any advice to the prospective aspirants or Fresh Insolvency Professionals who are seeing their career in Insolvency Law?

We all know that the Code is quite dynamic and evolving at a quick pace due to active judicial intervention, amendment by the Parliament and changes in rules and regulations by the IBBI. So, "Staying updated is a key to success".

The prospective aspirants and Fresh Insolvency Professions should always keep abreast of latest case laws and latest amendment. They should also attend court hearing which will help them to understand ever evolving law and help them understand practicality of the process under Code.

9. How significantly do you think the IBBI and IPAs serves the profession of Insolvency Professionals and what suggestion you want to give for the improvement?

The IBBI and IPAs play a very significant role in the profession of Insolvency Professional by consistent direction, counselling and guidance. Also, the IBBI and IPA are organising orderly webinars, seminars, and presentations to keep the IPs updated. The IBBI and IPAs are providing well-structured portals for educating the IPs.

However, in several cases, the IPs are bearing the CIRP/Liquidation expenses out of their own pockets and not able to recover the expenses due to one or another reasons. In all such cases, IBBI and IPA should come forward to make arrangement for the reasonable reimbursement to the IPs.

10. Lastly, where do you see Insolvency and Bankruptcy Code and yourself as an IP in next 5 years?

The field of Insolvency and Bankruptcy Code is expanding day by day and next big thing will be cross border insolvency and individual insolvency. The Code hopefully will try to fix issue of timeline and other issues which are affecting proper implementation of the Code.

There is lot of scope for professionals to grow in the field of insolvency as it has opened wide arena of opportunities. I see myself as a diligent practitioner of insolvency law to enhance my skills and adding values for quick redressal of the insolvency process.

Insight!

Development of the Market for Liquidation Assets through Direct Tax Incentives

CA KARAN N. SANGHAVI

M.Com., ACA, ID, GIP

Per the September 2021 quarter end newsletter published by the Insolvency & Bankruptcy Board of India, about 46% of the cases admitted by the National Company Law Tribunal, ended up in an order for commencement of liquidation by the adjudicating authority. Additional 57 liquidation orders during the quarter resulted in the total tally of corporate persons under liquidation in IBC to 1419 of which 1155 (81%) of the cases are still ongoing upto September 2021.

From the same report, it is also known that about 39% of these ongoing liquidations are pending for a period exceeding 2 years. An order for liquidation is essentially a death blow to the valuation and realisable value of the assets under liquidation. The buyer for liquidation assets essentially knows that he may not be required to shell out the liquidation value let alone a premium on it, under the right circumstances. Circumstances that include the nature of the goods being perishable, lack of buyer interest, attachments, technological obsolescence and so on.

Assets under liquidation are broadly from three main sources, i.e., the liquidation process under the Insolvency & Bankruptcy Code,

2016, the liquidation process under the Companies Act, 2013, and the enforcement of security interest by Financial Service Providers under The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. While the means of sale in most cases involve a sale through public auction inviting bids, in some cases we have also seen a sale through private means.

Section 36 of the Insolvency & Bankruptcy Code, 2016, specifically deals with what forms a part of the liquidation estate and what does not. Further, regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, mandates the resolution professional to appoint two valuers to determine the realisable value of the assets of the corporate debtor. Regulation 35 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, further requires the liquidator, where the liquidator is of the opinion that fresh valuation is required, appoint two registered valuers to determine the realisable value of the assets or businesses. Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, tells us the manner and mode of sale of assets.

Earlier in 2021, the Insolvency & Bankruptcy Board of India set up two online platforms for selling distressed assets under the Code, National e-Governance Services Ltd and Mjunction Services Ltd, a joint venture between Tata Steel. Although it is not mandatory for liquidators to channel liquidation assets through this platform, the vision was to enable a platform for better symmetry of information that could enable an efficient price discover mechanism, making the market place more transparent and maximising stakeholder interest.

◆ Is there a market for liquidation assets?

Before we deep-dive into debating on the means of value maximisation for the market for liquidation assets, we must first determine the answer to a very basic questions that form a precedent, does there really exist a market for Liquidation Assets? Is there room to develop it? Are buyers willing to pay more?

Referring back to the September 2021 quarter end newsletter published by the Insolvency & Bankruptcy Board of India, Table 2 of the said newsletter deals with the details of closed liquidations under IBC, we see that the total realisations under these proceedings have been to the tune of ₹ 1,403.26 Crore as against a perceived liquidation value assessed at ₹ 1,443.93 Crore. This leads us to conclude that actual realisations have only been to the tune of 98% (approx.). Hence a conclusion drawn upon plain calculation would be that there is no market as assets are unable to fetch even their perceived realisable value, let alone command a premium.

However, upon further data analysis of the components that form a part of this database reveal another narrative. Three cases can be picked out as outliers, they are: M/s Frontier Lifeline Pvt. Ltd, M/s Innovative Studios Pvt. Ltd and M/s Topworth Pipes & Tubes Pvt. Ltd.

M/s Frontier Lifeline Pvt. Ltd

The company was dragged into bankruptcy proceedings by State Bank of India and Bank of Baroda, which was admitted by NCLT in August last year. The petition claimed that the firm defaulted payment of about ₹ 79.93 crore to SBI and ₹ 78.30 crore to Bank of Baroda as on November 17, 2017. Under the process, the liquidation value was fixed at about ₹ 134.07 crore.

First Step Ventures Limited, filed a revival plan for the company with a value of ₹ 116 crore. But the committee of lenders did not consider the plan due to the completion of 270 days granted under the process. As a result, the Kolkata Bench of the NCLT passed an order to liquidate the company. The liquidation however ended in a scheme of compromise under section 230 of the Companies Act that lead to a realisation of about 55% of the liquidation value. However, it worthy to note that there was no sale of assets under liquidation.

M/s Innovative Studios Pvt. Ltd.

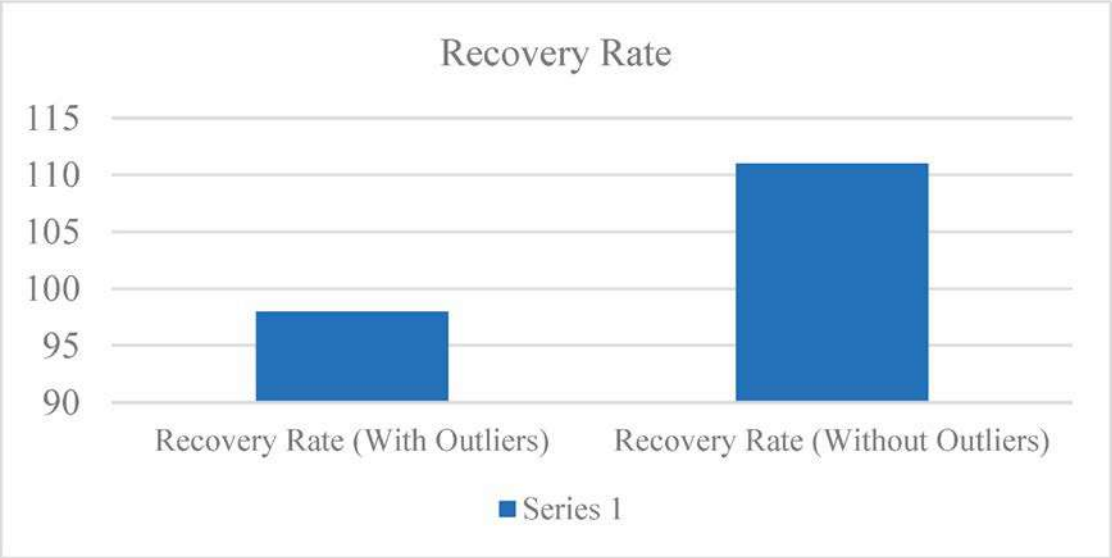
On 11th April 2019, the Bengaluru bench of the National Company Law Tribunal admitted an application for initiation of corporate insolvency resolution process against M/s Innovative Studios Pvt. Ltd. However, unable to fetch a suitable resolution plan, an order to initiate liquidation was sought by the Committee of Creditors. The order initiating liquidation was formally passed by the Adjudicating Authority. The liquidation however ended in a scheme of compromise and amalgamation under section 230 of the Companies Act that lead to a realisation of about 51% of the liquidation value. However, it worthy to note that there was no sale of assets under liquidation by the liquidator.

M/s Topworth Pipes & Tubes Pvt. Ltd.

On a Petition under section 7 filed under the Insolvency and Bankruptcy Code, 2016 by Bank of Baroda, the Corporate Debtor *viz.* Topworth Pipes & Tubes Private Limited was put under Corporate Insolvency Resolution Process by an order dated 11th December 2018 by the Ahmedabad bench of the National Company Law Tribunal. Under the absence of a resolution plan, an order for liquidation was passed on 12th June 2020.

The Liquidator on the recommendation of the Committee of Creditor proceeded to sell under liquidation as a going concern in compliance with provisions under regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. It is worthy to note realisations by the liquidator were to the tune of 126% of the realisable value of the assets

While we discuss these three cases it is important to note that combined these represent over 21% by value, all the cases closed under liquidation. When we exclude these three outliers, we find that the total realisations as against the perceived liquidation value is actually at 111%. This goes to show that not only are assets under liquidation realising their perceived value, but there are buyers willing to pay a premium for it.



M/s Topworth Pipes & Tubes Private Limited serving a classic example of how sale as a going concern shall serve as a value maximisation tool for liquidators, fetching a whopping ₹ 38 Crore or 26% higher than its liquidation value.

Hence with this we can amend our conclusion to be that there is a market for liquidation assets, there is room to develop it and there are buyers willing to pay the right price.

◆ Incentives through Direct Tax Laws

A tax incentive is usually offered to promote and progress some kind of economic activity. For e.g., Tax Holidays, Tax Credits, Deductions & Additional Deductions, Liberalised taxation rate and also extended period of payment.

Tax Credits

According to a 1998, International Monetary Fund report on `Tax Law Design and Drafting', Investment allowances and tax credits are forms of tax relief that are based on the value of expenditures on qualifying investments. They provide tax benefits over and above the depreciation allowed for the asset. A tax allowance is used to reduce the taxable income of the firm. A tax credit is used to directly reduce the amount of taxes to be paid.

Section 32A of the Income-tax Act, 1961, allows for deduction for acquisition of 'new plant & machinery, ship or aircraft' to the tune of 25%/20% as the case may be.

Allowing an additional deduction in line with that under section 32A maybe explored by the tax authorities and policy makers for aseets/class of assets acquired under liquidation. This will certainly incentivize the investor or buyer to promptly purchase such assets before they turn onerous for the liquidator. Hence maximizing value for the corporate debtor under liquidation.

Additional Depreciation

Perhaps a more beneficial method for the exchequer would also be allowing additional depreciation on assets/asset classes procured under liquidation. Section 32 of the Income-tax Act, 1961, allows assessee's to claim depreciation from the income under the head 'Profits & Gains from Business & Profession' at the rate that is specified under the Income-tax Act. Allowing an additional rate of depreciation over and above the already mandated one will certainly benefit the assessee in the immediately succeeding assessment years. Below is an illustration of how this could work out:

Depreciation on Plant & Machinery that is allowed as per Income-tax rules: 15% Additional Depreciation: Flat 50% on the depreciation amount. Hence for Assets acquired under liquidation to the tune of say ₹ 20 Crore, the assessee would be eligible to claim deduction of ₹ 4.50 Crore, enabling a cashflow saving of ₹ 1.50 Crore x applicable tax rate. Which could be channelled into a competitive bidding for such assets.

Deductions under Chapter VIA

Section 80A - 80U deal with certain sums that an assessee may deduct from the total income that is computed. These deal from the range of payment towards premiums for life insurance policies, investments under equity linked savings schemes, payments towards purchase of electric vehicles and deductions with respect towards profits and gains from certain businesses & professions.

A deduction with respect to amounts paid towards acquisition of assets/asset classes under liquidation from or by a certain class of individuals or corporate persons subject to a minimum holding period can also be explored.

The use of the incentives can also be constrained to ensure that they do not fully eliminate the tax the firm must pay in the year. Deductions could be restricted to some percentage of taxable income, or a credit could be limited to some percentage of tax otherwise payable. They do, however, limit the revenue cost to the government and ensure that firms cannot use incentives to eliminate their tax payable entirely.

◆ Conclusion

The assets under liquidation sometimes maybe of the nature where passage of time may cause them to become technologically obsolete, for example, plant & machinery may become out dated by the time it is sold, spectrum for telecommunication companies may become outdated, or patents may expire.

Direct Tax Incentives in such cases may turn to become the spark that lights the fire of buyer interest, thereby contributing to maximizing value for liquidation assets and recovery on it there on.

Credit is the back bone of any economy, to ensure that the credit culture of a country is healthy, not only the regulations governing the disbursement and compliance be strong, but also the modes of its recovery and means of maximizing its residual value be adequate. A strong bankruptcy mechanism is what supports a strong financial system, legislations like the Insolvency & Bankruptcy Code have enhanced the willingness of creditors to lend more and provided the ones who have failed, an easy exit.

A legislation alone cannot resolve the stressed assets issue of an economy. A harmonious synchronization of a network of initiatives, incentives and inducements is what adds synergy to the process. The Covid-19 fall out will call for action by the state to limit bankruptcies caused by default. With an unusual situation such as this, it is through incentives like tax deductions that the market for liquidation assets, be developed.

(2021) 133 taxmann.com 17 (SC)

SUPREME COURT OF INDIA

Committee of Creditors of Amtek Auto Ltd. v. Dinkar T. Venkatsubramanian

M.R. SHAH AND SANJIV KHANNA, JJ.

CIVIL APPEAL NO. 6707 OF 2019†

DECEMBER 1, 2021

Section 12 of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Time limit for completion of - Whether entire resolution process has to be completed within period stipulated under section 12 and any deviation would defeat object and purpose of providing such time limit - Held, yes - Whether where time-limit for completion of resolution process had been condoned in view of various litigations pending between parties and in peculiar facts and circumstances of case, any further delay in implementation of approved resolution plan submitted by successful resolution applicant, which had been approved by Adjudicating Authority and appeal against which had also been dismissed would defeat very object and purpose of providing specific mandatory time-limit under section 12 for completion of insolvency resolution process and, therefore, all concerned parties to approved resolution plan and connected with implementation of approved resolution plan were directed to complete implementation of approved resolution plan and any lapse on part of any parties in implementing approved resolution plan within stipulated time would be viewed very seriously - Held, yes (Para 10)

FACTS

- Pursuant to an application made under section 7, Corporate Insolvency Resolution Process (CIRP)

was initiated against corporate debtor and Resolution Professional was appointed.

- The Resolution Professional invited prospective resolution applicants to submit a resolution plan. The resolution plans submitted by DVI and 'Liberty' was considered by the Committee of Creditors. However, DVI withdrew its resolution plan and, therefore, the revised plan of Liberty was considered and approved by CoC. Subsequently, the resolution plan submitted by Liberty was approved by the NCLT.
- However, the successful resolution applicant - Liberty did not act as per the approved resolution plan.
- CoC filed an application under section 60(5) before NCLT informing that the successful resolution applicant failed to act as per the approved resolution plan and prayed for reinstatement of CoC and for grant of 90 days to the Resolution Professional for a fresh process rather then forcing corporate debtor to go into liquidation.
- NCLT held that 'Liberty' had defaulted in its obligation under approved the resolution plan and granted liberty to the CoC to approach the appropriate authority under the IBC but did not accepted request of carrying fresh process and directed the reconstitution of the CoC for reconsideration of the resolution plan submitted by DVI.
- On CoC's appeal, the appellate authority by the impugned order rejected the prayer for exclusion of time and ordered the liquidation of the corporate debtor.
- On appeal, the Supreme Court while issuing notice in the instant appeal by order dated 6-12-2019 stayed the liquidation order against corporate debtor.
- The Court permitted the Resolution Professional to invite fresh offers within a period of 21 days.
- DVI submitted the fresh resolution plan which was approved by CoC and Adjudicating Authority in month of July 2020.
- DVI failed to act upon approved resolution plan, CoC filed contempt application.
- DVI also filed an application for rectification of the earlier order by which the Supreme Court rejected the prayer of the DVI for withdrawal of the offer.
- The Supreme Court rejected DVI's application observing that application was an attempt to renege from the resolution plan which it submitted and to resile from its obligations. Simultaneously, the Court also dismissed the contempt petition.
- The Court directed that the appeal filed by the DVI against the approval of the resolution plan would peremptorily be heard and disposed of by the appellate authority.

- Thereafter, the appellate authority dismissed the appeal preferred by the DVI which was filed against the order passed by the adjudicating authority dated 9-7-2020 approving the resolution plan submitted by the DVI itself. Thus thereafter, the resolution plan submitted by the successful resolution applicant - DVI was to be implemented and acted upon by the DVI. However subsequently when the instant appeal was taken up for further hearing, it was pointed out that the DVI - successful resolution applicant was not acting as per the approved resolution plan. However, it was pointed out that the implementation of the successful resolution plan has been commenced. Therefore, the Court directed the parties to submit the status report on implementation of the approved resolution plan submitted by DVI.
- The Court directed DVI's sum of Rs. 500 crores was to be transferred to bank account of corporate debtor.

HELD

- An amount of Rs. 500 crores are transferred to the bank account of the corporate debtor. It is to be noted that even in the status report the DVI has stated that DVI has been committed towards its approved resolution plan and has been taking active steps towards its implementation. (Para 7)
- Under the approved resolution plan, both the parties have to fulfil their obligations. The corporate debtor has also to perform its obligations simultaneously so that the amount of Rs. 500 crores be transferred to the financial creditors/ lenders of the corporate debtor. It is the case on behalf of the respective parties that the aforesaid obligations are to be performed mutually and simultaneously. It is reported that Implementation and Monitoring Committee (IMC) has been constituted comprising of resolution professional, three identified lenders of the corporate debtor and nominee of DVI to supervise the implementation of the resolution plan. (Para 8)
- The approved resolution plan has to be implemented at the earliest and that is the mandate under the IBC. As per section 12, subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process, which can be extended by a further period of 180 days. As per proviso to section 12, which has been inserted by Act 26 of 2019, the insolvency resolution process shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under section 12 and the time taken in legal proceedings in relation to such

resolution process of the corporate debtor. As per the third proviso to section 12, which is also inserted by Act 26 of 2019, where the insolvency resolution process of a corporate debtor is pending and has not been completed within a period stated hereinabove, *i.e.*, within a period of 330 days, such resolution process shall be completed within a period of 90 days from the date of commencement of the IBC Amendment Act, 2019, *i.e.*, 16-8-2019. (Para 9)

- Thus, the entire resolution process has to be completed within the period stipulated under section 12 and any deviation would defeat the object and purpose of providing such time limit. However, by earlier order, the time limit has been condoned in view of the various litigations pending between the parties and in the peculiar facts and circumstances of the case. Therefore, any further delay in implementation of the approved resolution plan submitted by DVI which as such has been approved by the Adjudicating Authority in the month of July, 2020 and even the appeal against the same has been dismissed subsequently, any further delay would defeat the very object and purpose of providing specific time limit for completion of the insolvency resolution process, as mandated under section 12. Therefore, all the concerned parties to the approved resolution plan and/or connected with implementation of the approved resolution plan including IMC are directed to complete the implementation of the approved resolution plan, within a period of four weeks, without fail. It is further directed that on implementation of the approved resolution plan and even as per the approved resolution plan, an amount of Rs. 500 crores deposited by DVI-successful resolution applicant be transferred to the respective lenders/financial creditors as per the approved resolution plan and/or as mutually agreed. Any lapse on the part of any of the parties in implementing the approved resolution plan within the time stipulated shall be viewed very seriously. (Para 10)

CASE REVIEW

Committee of Creditors of Amtek Auto Ltd. v. *Dinkar T. Venkatasubramanian* (2019) 110 taxmann.com 278 (NCL - AT) (para 11) *affirmed.*

Tushar Mehta, SG, **Ms. Misha**, **Anoop Rawat** , **Sidhant Kant**, **Ms. Prabh Simran Kaur**, Advs. and **S.S.Shroff**, AOR *for the Appellant.* **Mayank Pandey**, **E.C. Agrawala**, **Parag Tripathi**, Sr. Advs. **Sumant Batra**, **Sanjay Bhatt**, **Ms. Niharika Sharma**, **Karan Kohli**, **Anirudh Dvsaj**, **Ms. Akansha Srivastava**, Advs.**Rabin Majumder**, **Ravindra Sadanand Chingale**, **P.S. Sudheer** and **Ms. Sonam Gupta**, AOR's *for the Respondent.*

JUDGMENT

M.R. Shah, J. - Feeling aggrieved and dissatisfied with the impugned judgment

and order dated 16-8-2019 passed by the National Company Law appellant Tribunal, New Delhi (hereinafter referred to as the 'Appellate Authority') in *Committee of Creditors of Amtek Auto Ltd.* v. *Dinkar T. Venkatasubramanian* (2019) 110 taxmann.com 278, the Committee of Creditors of Amtek Auto Limited through Corporation Bank (hereinafter referred to as the 'COC') has preferred the present appeal.

2. The present appeal, as such, has a chequered history.

3. Pursuant to an application made under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'IBC'), the corporate insolvency resolution process was initiated against Amtek Auto Limited - Corporate Debtor on 24-7-2017. A resolution professional was appointed. An advertisement was published by the resolution professional inviting prospective resolution applicants to submit a ResolutionPlan by 31-8-2017. The Resolution Plans submitted by respondent No. 3 herein - Deccan Value Investor LP (hereinafter referred to as the 'DVI') and respondent no. 2 herein - M/s Liberty House Group Private Limited (hereinafter referred to as the "Liberty") were considered by the COC. However, DVI withdrew its Resolution Plan and therefore the revised plan of Liberty was considered and approved by the COC on 2-4-2018. Subsequently, the Resolution Plan submitted by Liberty came to be approved by the National Company Law Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the "Adjudicating Authority") *vide* order dated 25-7-2018. However, the successful resolution applicant - Liberty did not act as per the approved Resolution Plan. Thereafter, number of proceedings were initiated against the successful resolution applicant - Liberty.

3.1 An application under section 60(5) read with section 74(3) of the IBC was filed by the COC/financial creditors before the Adjudicating Authority informing that the successful resolution applicant - Liberty has failed to act as per the approved Resolution Plan and it was prayed to reinstate the COC and the resolution professional to ensure that the Corporate Debtor remain as a going concern. Further prayer was made to grant 90 days to the resolution professional to make another attempt for a fresh process rather than forcing the Corporate Debtor into liquidation on account of fraud committed by Liberty.

3.2 The Adjudicating Authority held that Liberty has defaulted in its obligation under the approved Resolution Plan and granted liberty to the COC and the resolution professional to approach the appropriate authority under the IBC for the determination of the wilful default. The Adjudicating Authority did not accede to the request for carrying out a fresh process by inviting the plans again but directed the reconstitution of the COC for reconsideration of the Resolution Plan submitted by DVI. The Adjudicating Authority disposed of the said application/appeal accordingly.

3.3 Feeling aggrieved and dissatisfied with the order passed by the adjudicating authority dated 13-2-2019, the COC filed an appeal before the appellate authority - NCLAT. That thereafter, the resolution professional invited fresh applications from prospective resolution applicants

and called upon them to submit their resolution plans. Over and above two other resolution applicants, an interest was also received from DVI on 31-5-2019. However, the same was rejected and DVI was declared as an ineligible resolution applicant. Against the said rejection, DVI filed an appeal before the appellate authority. *Vide* order dated 26-6-2019, the appellate authority held that in light of the earlier order dated 20-5-2019 the COC was required to consider all resolution plans subject to the pending appeal. The DVI submitted the revised resolution plan. However subsequently, the appellate authority by the impugned judgment and order disposed of the appeal filed by the COC and rejected the prayer for exclusion of time. Consequently, virtually ordered the liquidation of the Corporate Debtor.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16-8-2019 passed by the appellate authority, the COC has preferred the present appeal contending *inter alia* that (*a*) the Corporate Debtor is financially viable entity and there is enough interest in the market for submission of a resolution plan for the Corporate Debtor; (*b*) Resolution of the financial affairs of a distressed company is primary aim of the Code and a failure/infirmity on the part of a resolution applicant ought not to undermine the primary mischief sought to be resolved; (*c*) Maximisation of the value of the assets of the Corporate Debtor is imbedded in the Code and even forms the part of its Preamble and therefore, an opportunity ought to be granted to the Committee of Creditors to make an attempt at resolution specially keeping in view the availability of suitable resolution applicants in the market; and (*d*) Liberty, by its deliberate failure in implementing the Approved Resolution Plan, has defrauded the Adjudicating Authority, the Committee of Creditors and all the stakeholders of the Corporate Debtor, hence, the period extended in proceeding with the CIR Process with Liberty as a Resolution Applicant ought to be excluded to uphold the principles underlining the Code.

5. By order dated 6-9-2019, while issuing notice in the present appeal, this Court stayed the liquidation proceedings, until further orders.

5.1 When the appeal was taken up for further hearing on 24-9-2019, it was submitted on behalf of the COC that the resolution professional may be permitted to invite the fresh offers within a period of 21 days. This Court permitted the resolution professional to invite fresh offers within a period of 21 days. This Court further passed an order that within two weeks thereafter, the COC shall take a final call in the matter and the decision of the COC and the offers received be placed before this Court. DVI also submitted the fresh resolution plan which was approved by the COC with 70% majority. By order dated 8-6-2020, this Court relegated the matter of IA No. 48906/2020 filed by the COC for appropriate directions/orders to the adjudicating authority to consider the same and pass appropriate orders, after hearing the parties. This Court also observed that the time spent before the adjudicating authority and before this Court be excluded for calculating long stop date. DVI tried to withdraw from resolution plan. The same came to be

specifically rejected by this Court *vide* order dated 18-6-2020. This Court further observed that in case the DVI indulges in such kind of practice, it will be treated as contempt of this Court in view of the various orders passed by this Court at its instance.

5.2 That the resolution plan submitted by the DVI came to be approved by the adjudicating authority - NCLT in the month of July, 2020. Since the approved resolution plan submitted by the DVI was not acted upon by the DVI, the COC filed Contempt Petition No. 524/2020 before this Court. DVI also filed an application for rectification of the earlier order dated 18-6-2020 by which this Court rejected the prayer of the DVI for withdrawal of the offer and observed that in case the DVI indulges in such kind of practice, it will be treated as contempt of this Court. Both the contempt petition filed by the COC as well as the application for rectification filed by the DVI were heard together. By a detailed order dated 23-2-2021, this Court dismissed the application for rectification filed by the DVI of the order of this Court dated 18-6-2020 instituted by the DVI.

5.3 While rejecting the said application, this Court specifically observed that DVI's application for rectification is an attempt to renege from the resolution plan which it submitted and to resile from its obligations. It was further observed that this is a devious attempt which must be disallowed. Simultaneously, this Court also dismissed the contempt petition. However, while dismissing the contempt petition, it is observed in para 38 as under :

"38 The issue which needs to be addressed is whether recourse to the contempt jurisdiction is valid and whether it should be exercised in the facts of this case. Undoubtedly, as we have noted earlier, the conduct of DVI has not been *bona fide*. The extension of time in the course of the judicial process before this Court enures to the benefit of DVI as a resolution applicant whose proposal was considered under the auspices of the directions of the Court. DVI attempted to resile from its obligations and a reading of its application which led to the passing of the order of this Court dated 18 June 2020 will leave no doubt about the fact that DVI was not just seeking an extension of time but a re-negotiation of its resolution plan after its approval by the CoC. Then again, despite the order of this Court dated 18 June 2020 rejecting the attempt of DVI, it continued to persist in raising the same pleas within and outside the proceedings before the NCLAT. The conduct of DVI is lacking in *bona fides*. The issue however is whether this conduct in raising the untenable plea and in failing to adhere to its obligations under the resolution plan can *per se* be regarded as a contempt of the order of this Court dated 18 June 2020. DVI was undoubtedly placed on notice of the order that should it proceed in such terms, it would invite the invocation of the contempt jurisdiction. Having said that, it is evident that the order of this Court dated 18 June 2020 rejected the IA moved by DVI and as a necessary consequence, the basis on which the

reliefs in the IA were sought. Therefore correctly, it has been now stated on behalf of the DVI that it will not set-up a plea of force majeure in view of the dismissal of its IA on 18 June 2020.

29 However lacking in *bona fides* the conduct of DVI was, we must be circumspect about invoking the contempt jurisdiction as setting up an untenable plea should not in and by itself invite the penal consequences which emanate from the exercise of the contempt jurisdiction. Likewise, the default of DVI in fulfilling the terms of the resolution plan may invite consequences as envisaged in law. On the balance, we are of the considered view that it would not be appropriate to exercise the contempt jurisdiction of this Court. During the course of the hearing, Dr. Abhishek Manu Singhvi, Learned Senior Counsel has relied on the affidavit filed in response to the contempt petition while seeking to urge that DVI will be within in its rights to urge whether the conditions precedent to the enforcement of the resolution plan have been fulfilled. Since DVI is in appeal before the NCLAT, we express no opinion on the merits of the submission. The NCLAT will take a view on the tenability and merits of the submission of DVI that the conditions precedent under the resolution plan have not been fulfilled after hearing the parties. This is not an issue which arises before the Court in the present proceedings either upon the application for rectification moved by DVI or the contempt petition moved by the CoC."

5.4 While dismissing the application for rectification and disposing of the contempt proceedings, this Court ultimately concluded and directed as under :

"39 For the above reasons, our conclusions and directions are that :

(*i*) There is no merit in the application for rectification moved by DVI. IA No. 58156 of 2020 in Civil Appeal No 6707 of 2020 shall stand dismissed;

(*ii*) It is not expedient in the interest of justice to pursue the contempt proceedings. The Contempt Petition (C) No. 524 of 2020 in Civil Appeal No. 6707 of 2019 shall accordingly stand dismissed, subject to (*iii*) below;

(*iii*) In terms of the submission which has been made by DVI before this Court and even otherwise, as a consequence of the dismissal of its IA on 18 June 2020, it shall not set-up a plea for force majeure in the proceedings which are pending before the NCLAT in appeal against the order of the NCLT approving the resolution plan; and

(*iv*) The appeal filed by DVI against the approval of the resolution plan by the NCLT shall peremptorily be heard and disposed of by the NCLAT not later than within a period of one month from the date of the present judgment."

This Court also directed that the appeal filed by the DVI against the approval of the resolution plan shall peremptorily be heard and disposed of by the appellate

authority within a period of one month from the date of the said judgment.

5.5 That thereafter, by a detailed judgment and order dated 16-4-2021, the appellate authority dismissed the appeal preferred by the DVI which was filed against the order passed by the adjudicating authority dated 9-7-2020 approving the resolution plan submitted by the DVI itself. Thus thereafter, the Resolution Plan submitted by the successful resolution applicant - DVI was to be implemented and acted upon by the DVI. However subsequently when the present appeal was taken up for further hearing, it was pointed out that the DVI - successful resolution applicant is not acting as per the approved resolution plan. However, it was pointed out that the implementation of the successful resolution plan has been commenced. Therefore, this Court directed the parties to submit the status report on implementation of the approved resolution plan submitted by DVI.

6. Status Report filed by DVI - successful resolution applicant was produced before this Court on 23-11-2021, when this Court passed the following order :

> 'We have heard Shri Tushar Mehta, learned Solicitor General appearing on behalf of the Appellant, Ms. Shikha Tandon, learned counsel appearing on behalf of the DVI/successful resolution applicant and Shri Sanjay Bhatt, learned counsel appearing on behalf of the Resolution Professional.
>
> It is not in dispute that the Resolution Plan submitted by the DVI has been approved by the NCLAT as far as back in July, 2020. Earlier, the attempts were made to resile from the Resolution plan which has not been accepted by this Court by detailed orders. Thereafter, the matter has been adjourned time and again so as to enable the DVI to act as per the Resolution Plan. Today, a status report has been filed on behalf of the respondent no. 3 - DVI.
>
> In paragraph 2, it is stated as under —
>
> > *"At the outset, it is submitted that DVI has been committed towards implementation of DVI's Resolution Plan and has been taking active steps towards its implementation. In furtherance of the same, DVI and/or its affiliate ("DVI Affiliate") has already remitted amounts aggregating to INR 500 Crore, i.e., the upfront infusion amount ("Upfront Cash Amounts") under DVI's Resolution Plan to the Indian branch of Standard Chartered Bank (DVI Affiliate's custodian bank) for settlement of debt under DVI's Resolution Plan. DVI is currently awaiting details of Amtek's designated accounts in which such Upfront Cash Amounts are to be remitted on the closing date, as may be agreed to between the members of the IMC for implementation of DVI's Resolution Plan. It is further stated that DVI undertakes to disburse this money in accordance with the terms of DVI's Resolution Plan, as and when such closing date is achieved."*

Under the Resolution Plan, the following steps are to be undertaken -

"(*a*) Delisting of Amtek's equity share capital from the stock exchanges - Completed.

(*b*) Increase of authorised share capital of Amtek and completion of necessary filings - Completed.

(*c*) DVI and/or its affiliate to subscribe to the equity shares of Amtek by infusing nominal amounts of INR 5,00,000 ("Nominal Infusion") -Ongoing.

(*d*) Debt identified as unsustainable to be converted into equity and equity to be issued and allotted to the creditors ("Unsustainable Equity Allotment") - Ongoing.

(*e*) Reduction in pre-CIRP shareholding of Amtek and equity held by way of Unsustainable Equity Allotment - This action is pending and can be undertaken only upon Nominal Infusion and Unsustainable Equity Allotment.

(*f*) Issuance and allotment of 90% of equity share capital to DVI and/or its affiliates - Ongoing.

(*g*) Issuance and allotment of 10% of equity share capital to financial creditors - Ongoing.

(*h*) Issuance and allotment of non-convertible debentures to DVI Affiliate - Ongoing DVI *vide* its emails dated 18-11-2021 had informed the IMC members that:

(*a*) Upfront Cash Amounts have currently been remitted by DVI Affiliate to the Indian branch of the DVI Affiliate's custodian bank for settlement of debt under the Resolution Plan; and

(*b*) details of the designated accounts in which such amounts are to be deposited have not been provided to DVI."

One of the steps to be undertaken by the DVI is to deposit Rs. 500 crores "Upfront Cash Amounts". As per the communication dated 18-11-2021 addressed by DVI a sum of Rs. 500 crores is lying in a deposit account in India with their custodian Standard Chartered Bank and the money is ready for disbursement to lenders. The submission on behalf of the DVI is that unless and until the other steps are undertaken as per the Resolution Plan, the aforesaid amount of Rs. 500 crores may not be transferred to Amtek Auto Limited. The aforesaid is just contrary to their own communication dated 18-11-2021. Therefore, when even according to the DVI a sum of Rs. 500 crores is lying in a deposit account in India with their custodian and even as per the said communication the money is ready for disbursement to lenders, we direct that the aforesaid amount of Rs. 500 crores to be transferred to the Bank Account of Amtek Auto Limited by 24-11-2021, the particulars of the Bank Account are as under -

Bank Name - State Bank of India A/c No. - 32985171467 IFSC - SBIN0004109 Beneficiary - Amtek Auto Limited Branch - 12th Floor, STC Building, 1, Tolstoy Marg, Jawahar Vyapar Bhawan, New Delhi

Put up on 25-11-2021.'

7. Today, when the present appeal is taken up for further hearing, Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the COC has submitted that an amount of Rs. 500 crores are transferred to the bank account of the Corporate Debtor - Amtek Auto Limited. It is to be noted that even in the status report the DVI has stated that DVI has been committed towards its approved resolution plan and has been taking active steps towards its implementation.

8. Under the approved resolution plan, both the parties have to fulfil their obligations. The Corporate Debtor has also to perform its obligations simultaneously so that the amount of Rs. 500 crores be transferred to the financial creditors/lenders of the Corporate Debtor. It is the case on behalf of the respective parties that the aforesaid obligations are to be performed mutually and simultaneously. It is reported that Implementation and Monitoring Committee (IMC) has been constituted comprising of resolution professional, three identified lenders of the Corporate Debtor and nominee of DVI to supervise the implementation of the resolution plan.

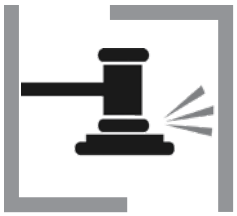
9. The approved resolution plan has to be implemented at the earliest and that is the mandate under the IBC. As per section 12 of the IBC, subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process, which can be extended by a further period of 180 days. As per proviso to section 12 of the IBC, which has been inserted by Act 26 of 2019, the insolvency resolution process shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under section 12 of the IBC and the time taken in legal proceedings in relation to such resolution process of the Corporate Debtor. As per the third proviso to section 12 of the IBC, which is also inserted by Act 26 of 2019, where the insolvency resolution process of a Corporate Debtor is pending and has not been completed within a period stated hereinabove, *i.e.*, within a period of 330 days, such resolution process shall be completed within a period of 90 days from the date of commencement of the IBC amendment Act, 2019, *i.e.*, 16-8-2019.

10. Thus, the entire resolution process has to be completed within the period stipulated under section 12 of the IBC and any deviation would defeat the object and purpose of providing such time limit. However, by earlier order, the time limit has been condoned in view of the various litigations pending between the parties and in the peculiar facts and circumstances of the case. Therefore, any further delay in implementation of the approved resolution plan submitted by DVI which as such has been approved by the adjudicating authority in the month of July, 2020 and even the appeal against the same has been dismissed

subsequently, any further delay would defeat the very object and purpose of providing specific time limit for completion of the insolvency resolution process, as mandated under section 12 of the IBC. Therefore, we direct all the concerned parties to the approved resolution plan and/or connected with implementation of the approved resolution plan including IMC to complete the implementation of the approved resolution plan, within a period of four weeks from today, without fail. It is further directed and it goes without saying that on implementation of the approved resolution plan and even as per the approved resolution plan, an amount of Rs. 500 crores now deposited by DVI-successful resolution applicant be transferred to the respective lenders/ financial creditors as per the approved resolution plan and/or as mutually agreed. Any lapse on the part of any of the parties in implementing the approved resolution plan with the time stipulated hereinabove shall be viewed very seriously.

11. With the above observations and directions, the present appeal stands disposed of. Pending applications, if any, also stand disposed of.

† Arising out of order in *Committee of Creditors of Amtek Auto Ltd.* v. *Dinkar T. Venkatasubramanian* (2019) 110 taxmann.com 278 (NCL-AT.)



(2021) 133 taxmann.com 159 (SC)

SUPREME COURT OF INDIA

ES Krishnamurthy *v.* Bharath Hi Tech Builders (P.) Ltd.

DR. DHANANJAYA Y. CHANDRACHUD

AND A.S. BOPANNA, JJ. CIVIL APPEAL NO. 3325 OF 2020†

DECEMBER 14, 2021

Section 60, read with section 7, of the Insolvency and Bankruptcy Code, 2016 - Corporate person's Adjudicating Authorities - Adjudicating Authority - Whether Adjudicating Authority (NCLT) is empowered only to verify whether a default has occurred or has not occurred and based upon its decision, Adjudicating Authority must then either admit or reject an application under section 7(5) - Held, yes - Whether Adjudicating Authority must either admit application under clause (a) of sub-section (5) of section 7 or it must reject application under clause (b) of sub-section (5) of section 7; statute does not provide for Adjudicating Authority to undertake any other action, but for two choices available in accordance with section 7(5) - Held, yes - Whether Adjudicating Authority cannot compel a party to proceedings before it to settle a dispute - Held, yes (Paras 24 and 27)

FACTS

- A Master Agreement to sell was entered between respondent and facility agent to raise an amount for the development of agricultural land, Under the terms of the Master Agreement. The Facility Agent was to sell the plots to prospective purchasers against the payment of a lump sum amount. The respondent was then required to pay interest at the rate of 25 per cent per annum compounded annually to the purchaser under the Master Agreement.
- In furtherance of the Master Agreement, the ninth appellant was allotted a plot in the project being developed by the respondent on the payment of a sum.
- Since requisite funds could not be generated through Master Agreement. A syndicate loan agreement was entered between the respondent and facility agent for availing a term loan from perspective lenders.
- The appellants extended term loan to respondent acting on the advice of facility agent.
- The respondent sought an extension of time for conveying the plots and also sought for extension of term loan agreement due to inability to refund principle amount.
- Due to respondent's default in making repayment appellants

instituted an application under section 7 before Adjudicating Authority.

- Respondent informed NCLT that it was exploring the possibility of settlement. NCLT disposed of the application based on the factors that respondent's efforts to settle the dispute were *bona fide*, the settlement process was under way; the procedure under the IBC was summary in nature, and could not be used to individually manage the case of each of the 83 petitioners before it; and initiation of CIRP in respect of the respondent would put in jeopardy the interests of home buyers and creditors, who had invested in the respondent's project, which was in advanced stages of completion. The NCLT directed the respondent corporate debtor to settle the remaining claims as soon as possible.

- The order of NCLT was challenged before NCLAT. The NCLAT by impugned order dismissed the appeal and uphold the order of NCLT.

- On appeal to the Supreme Court :

HELD

- A time limit for the completion of the CIRP within a period of 180 days (under sub-section (1) of section 12, subject to a further extension under sub-section (3)) commences from the date of the admission of the application to initiate the process. (Para 23)

- Both, clauses (*a*) and (*b*) of sub-section (5) of section 7, use the expression "it may, by order" while referring to the power of the Adjudicating Authority. In clause (*a*) of sub-section (5), the Adjudicating Authority may, by order, admit the application or in clause (*b*) it may, by order, reject such an application. Thus, two courses of action are available to the Adjudicating Authority in a petition under section 7. The Adjudicating Authority must either admit the application under clause (*a*) of sub-section (5) of section 7 or it must reject the application under clause (*b*) of sub-section (5) of section 7. The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available in accordance with section 7(5). (Para 24)

- In the instant case, the Adjudicating Authority noted that it had listed the petition for admission on diverse dates and had adjourned it, *inter alia*, to allow the parties to explore the possibility of a settlement. Evidently, no settlement was arrived at by all the original petitioners who had instituted the proceedings. The Adjudicating Authority noticed that joint consent terms had been filed before it. But it is common ground that these consent terms did not cover all the original petitioners who were before the Adjudicating Authority. The Adjudicating Authority was apprised of the fact that the

claims of 140 investors had been fully settled by the respondent. The respondent also noted that of the claims of the original petitioners who have moved the Adjudicating Authority, only 13 have been settled while, according to it "40 are in the process of settlement and 39 are pending settlements". Eventually, the Adjudicating Authority did not entertain the petition on the ground that the procedure under the IBC is summary, and it cannot manage or decide upon each and every claim of the individual home buyers. The Adjudicating Authority also held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it would dispose of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time frame. The petition was accordingly disposed of by directing the respondent to settle the remaining claims no later than within three months, and that if any of the remaining original petitioners were aggrieved by the settlement process, they would be at liberty to approach the Adjudicating Authority again in accordance with law. The Adjudicating Authority's decision was also upheld by the Appellate Authority, who supported its conclusions. (Para 26)

- The Adjudicating Authority has clearly acted outside the terms of its jurisdiction under section 7(5). The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute. (Para 27)

- Undoubtedly, settlements have to be encouraged because the ultimate purpose of the IBC is to facilitate the continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. As the Statement of Objects and Reasons accompanying the introduction of the Bill indicates, the objective of the IBC is to facilitate insolvency resolution "in a time bound manner" for maximisation of the value of assets, promotion of entrepreneurship, ensuring the availability of credit and balancing the interest of all stakeholders. What the Adjudicating Authority and Appellate Authority, however, have proceeded to do in the instant case is to abdicate their jurisdiction to decide a petition under section 7 by directing the respondent to settle the remaining claims within three months and leaving it open to the original petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance

with law. Such a course of action is not contemplated by the IBC. (Para 28)

- The IBC is a complete Code in itself. The Adjudicating Authority and the Appellate Authority are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelizes and circumscribes the ambit of such jurisdiction. Thus, while the Adjudicating Authority and Appellate Authority can encourage settlements, they cannot direct them by acting as courts of equity. (Para 29)

- A settlement has admittedly not been arrived at by the respondent with all the appellants. Moreover, in the instant appeal, impleadment applications have also been filed on behalf of an additional set of individuals claiming non-payment of their dues by the respondent. (Para 31)

- The order of the Adjudicating Authority, and the directions which eventually came to be issued, suffered from an abdication of jurisdiction. The Appellate Authority sought to make a distinction by observing that the directions of the Adjudicating Authority were at the `pre-admission stage', and that the order was not of such a nature which was prejudicial to the rights and interest of the stakeholders. The Appellate Authority was cognizant of the fact that even the time schedule for settlement which had been indicated by the Adjudicating Authority had elapsed, but then noted the impact of the outbreak of COVID-19 pandemic on the real estate market, including on the respondent. While acknowledging that the consent terms were "filed by some of the stakeholders though may not be all encompassing", the Appellate Authority nonetheless proceeded to dismiss the appeal as not maintainable. The observation that the appeal was not maintainable is erroneous. Plainly, the Adjudicating Authority failed to exercise the jurisdiction which was entrusted to it. A clear case for the exercise of jurisdiction in appeal was thus made out, which the Appellate Authority then failed to exercise. (Para 32)

- The provisions of section 7 have been amended with retrospective effect from 28-12-2019 by Act 1 of 2020. These provisions have been construed in the judgment of the Court in *Manish Kumar* v. *Union of India* (2021) 123 taxmann.com 343 (SC). Since the Court is inclined to restore the proceedings back to the Adjudicating Authority for a fresh consideration, it is not necessary for the Court to dwell on any other aspect, save and except for what weighed with the Adjudicating Authority in disposing of the petition without adjudicating on other issues of maintainability or merits. All the rights and contentions of the parties is left open to be urged before

and decided by the Adjudicating Authority. (Para 33)

- The appeal is accordingly allowed and the impugned judgment and orders dated 30-7-2020 and is set aside. The petition under section 7 is accordingly restored to the NCLT for disposal afresh. (Para 34)

CASE REVIEW

Brig E.S. Krishnamurthy v. *Bharath Hi Tech Builders (P.) Ltd.* (2021) 132 taxmann.com 304 (NCLAT - New Delhi) (para 34) *reversed* (***See Annex***).

Manish Kumar v. *Union of India* (2021) 123 taxmann.com 343 (SC) (para 33) *followed*.

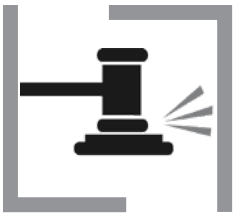
CASES REFERRED TO

Embassy Property Developments (P.) Ltd. v. *State of Karnataka* (2019) 112 taxmann.com 56/157 SCL 445 (SC) (para 16), *Innoventive Industries Ltd.* v. *ICICI Bank Ltd.* (2017) 84 taxmann.com 320/143 SCL 625 (SC) (para 16), *Pratap Technocrats (P.) Ltd.* v. *Monitoring Committee of Reliance Infratel Ltd.* (2021) 129 taxmann.com 132/167 SCL 508 (SC) (para 16), *Swiss Ribbons (P.) Ltd.* v. *Union of India* (2019) 101 taxmann.com 389/152 SCL 365 (SC) (para 16), *Manish Kumar* v. *Union of India* (2021) 123 taxmann.com 343 (SC) (para 16) and *Arun Kumar Jagatramka* v. *Jindal Steel & Power Ltd.* (2021) 125 taxmann.com 244/165 SCL 652 (SC) (para 30).

Srijan Sinha, Adv. and **Himanshu Chaubey**, AOR *for the Appellant*. **Ms. Aakanksha Nehra**, **Sandeep Bajaj**, Advs, **Soayib Qureshi**, AOR, **Ms. Sangya Gupta** and **Siddharth Shukla**, Advs. *for the Respondent*.

† Arising out of order of NCLAT New Delhi, in *Brig E.S. Krishnamurthy* v. *Bharath Hi-Tech Builders (P.) Ltd.* (2021) 132 taxmann.com 304.

FOR FULL TEXT OF THE JUDGMENT SEE
(2021) 133 taxmann.com 159 (SC)



(2021) 133 taxmann.com 219 (SC)

SUPREME COURT OF INDIA

Ngaitlang Dhar *v.* Panna Pragati Infrastructure (P.) Ltd.

L. NAGESWARA RAO AND B.R. GAVAI, JJ.

CIVIL APPEAL NOS. 3665-3666 AND 3742-3743 OF 2020†

DECEMBER 17, 2021

Section 30, read with section 61, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Submission of - Whether where Prospective Resolution Applicant (PRA) adopted a very casual and non-serious approach in failing to rectify anomalies in his bid despite being granted extensions of time and absenting himself from meeting of CoC on day which was his final opportunity in neck of 180 days statutory CIRP deadline and merely sought further extension of time, CoC was fully justified in its collective commercial wisdom in deciding to exclude PRA from further bidding process and in accepting highest bid from remaining PRAs - Held, yes - Whether such decision of CoC, in its commercial wisdom, could not be faulted even when 180 days deadline was subsequently extended by 90 days by NCLT since highest bid had been finalised within 180 days time and extension application was made to NCLT before 180 days deadline expired - Held, yes - Whether procedure adopted by RP as well as CoC was fair, transparent and equitable - Held, yes - Whether opinion expressed by CoC after due deliberations in meetings through voting, as per voting shares, is collective business decision and is non-justifiable, except on limited grounds as are available for challenge under section 30(2) or 61(3) - Held, yes - Whether therefore, NCLAT was not justified in setting aside NCLT's orders declining more time to PRA and accepting highest bidder selected by CoC especially when successful RA had paid off all creditors and company had become a going concern - Held, yes (Paras 27, 29, 30, 31, 35, 37 and 38)

FACTS

- An application came to be filed under section 7 for initiation of CIRP in respect of corporate debtor by the Allahabad Bank. The NCLT admitted the petition and as such, the CIRP came to be initiated in respect of the corporate debtor and an Interim RP came to be appointed, who was subsequently confirmed as the RP in the first Committee of Creditors (CoC) meeting.
- The Allahabad Bank and the Corporation Bank were the only financial creditors. In accordance with the provisions of the IBC, Expression of Interest (EoI) was invited from the prospective Resolution Applicants by the RP.

- The appellant, respondent No. 1 PPIPL, one AA and one AJ submitted their EoI. All the four Resolution Applicants submitted their Resolution Plans. In the CoC meeting, the appellant emerged as H1 bidder, whereas one AA emerged as H2 bidder.
- At the 7th CoC meeting, the CoC, with a 100 per cent voting share, approved the Resolution Plan of the appellant (H1 bidder), which was further approved by the NCLT. The respondent No. 1 PPIPL contended that in the proceedings before the CoC in the 5th meeting of CoC held on 11-12th February, 2020 it had sought for one or two days' time to submit its revised Resolution Plan, and accordingly, it submitted the same on 14-2-2020. The respondent No. 1 PPIPL, accordingly, filed an application before the NCLT, seeking a direction to the RP to take on record its revised Resolution Plan, dated 14-2-2020. The same came to be rejected by the NCLT, *vide* order dated 18-3-2020. The RP thereafter filed an unnumbered application seeking approval to the Resolution Plan submitted by the appellant (H1 bidder). The said application was allowed by the NCLT *vide* order dated 18-5-2020.
- The Appeal against both these orders came to be challenged before the NCLAT by way of Company Appeals by the respondent No. 1 PPIPL which were allowed.
- On appeal by the appellant before the Supreme Court :

HELD

- The 5th meeting of the CoC was held on 11-2-2020. The minutes of the said meeting, particularly Agenda No. 6, would reveal that the RP informed the CoC that there were numerous anomalies and deficiencies observed in the Resolution Plan of PPIPL and the same was intimated to the Resolution Applicant through e-mail dated 30-1-2020 with a request to rectify/correct the same and submit the same by 1-2-2020. However, PPIPL had failed to do so within the stipulated period. It would further reveal that an e-mail dated 1-2-2020, was received from PPIPL with a request to grant time for submission of rectified Resolution Plan by 3-2-2020. Accordingly, the rectified Resolution Plan came to be filed by PPIPL on 3-2-2020. In the said meeting, the CoC evaluated the Resolution Plans of all the four prospective Resolution Applicants. (Para 23)
- It would further reveal that the CoC continued the second round of negotiation after a lunch break. (Para 24)
- The minutes of the 5th meeting of the CoC would further reveal that the CoC thereafter invited appellant for negotiation of the bid and requested him to enhance the bid amount. Appellant agreed to

enhance the bid amount from Rs. 63 crores to Rs. 64 crores. Thereafter again, the representative of PPIPL returned back and requested to adjourn the meeting for a few days. The said request was specifically rejected by the CoC informing the representative of PPIPL that they were bound to follow the IBC timeline and wanted to conclude the matter by next day. The said 5th meeting of the CoC was adjourned to next day and was held on 12-2-2020. The minutes of the said meeting would further reveal that the representative of PPIPL had informed the CoC/RP that the Directors of their Company will not be available for the meeting to be held on 12-2-2020 and the meeting should be deferred by one or two days. The minutes of the meeting would further reveal that all the prospective Resolution Applicants present in the meeting sought clarification from the CoC members and the RP about the status of Resolution Applicant, who was absent in the meeting, as to whether it would be allowed to participate in the further bidding process or not. The CoC members specifically replied that since they were at the neck of the timeline (i.e. 180 days were to get over on 24-2-2020), it was decided to exclude the respondent No. 1 PPIPL, who was not present in the said meeting. The proceedings commenced after lunch break, wherein only two prospective Resolution Applicants, i.e., appellant and AA were present. Thereafter, the CoC adopted Swiss Challenge open bidding method. In the said bidding process, both prospective Resolution Applicants present increased their offer. In the said open bidding process between the two prospective Resolution Applicants present, appellant was found to be the highest bidder/ prospective Resolution Applicant having offered the bid of an upfront amount of Rs. 64.30 crores plus CIRP costs. The said Resolution Plan of appellant was approved unanimously by Allahabad Bank having 68.34 per cent voting rights and the Corporation Bank having 31.66 per cent voting rights. (Para 25)

- It is thus clear that the respondent No. 1 PPIPL was very much aware that the CoC has decided to finalise the proceedings by 12-2-2020. It is also clear that though PPIPL was first called upon by the CoC to enhance the bid amount, it had specifically rejected the same. It insisted on disclosing the basis of score. In the proceedings of the 5th meeting of the CoC dated 11-2-2020, post lunch, though appellant had enhanced his bid from Rs. 63 crores to Rs. 64 crores, the representative of PPIPL subsequently came and requested for adjourning the meeting for few days. The said request was specifically rejected by the CoC by informing the representative of PPIPL that it had to adhere to the IBC timeline and would have to conclude the matter

by next day. On the next day, i.e., 12-2-2020, when the adjourned proceedings of the CoC were held, the respondent No. 1 PPIPL had sent an e-mail, stating therein that the Directors of its Company will not be available for the said meeting and requested for deferring the meeting by a day or two. On the insistence of all the prospective Resolution Applicants present, the CoC clarified that since the timeline was coming to an end, it had decided to exclude the prospective Resolution Applicants who were not present in the said meeting. In the said meeting, appellant came to be declared as the highest bidder after he improved his bid in the open bidding held between him and AA. (Para 26)

- It could thus be seen that the RP as well as the CoC had acted in a totally transparent manner. An equal opportunity was accorded to all the prospective Resolution Applicants. However, the respondent No. 1 PPIPL, without improving his bid amount, went on insisting for more time, which request was specifically rejected by the CoC. (Para 27)

- Though the final decision of the CoC would not be challenged on the ground that the `commercial wisdom' of the CoC should not be interfered with, it is only the process of decision making, which can be challenged if there is any material irregularity in the said proceedings. (Para 28)

- As already discussed hereinabove, it is found that the procedure adopted by the RP as well as the CoC was fair, transparent and equitable. The CoC was facing the timeline, which was to end on 24-2-2020, before which it had to finalise its decision. In these circumstances, it cannot be said that the decision of the CoC, to not grant any further time to PPIPL for submission of its revised bid and to finalise the Resolution Plan on 12-2-2020 itself, can be said to be falling in the category of the term `material irregularity'.(Para 29)

- The minutes of the proceedings of the 5th meeting of the CoC have been extracted in *extenso*. It could be seen that the CoC, after due deliberations, evaluated all the proposed Resolution Plans submitted by all the prospective Resolution Applicants and after giving sufficient opportunity to all the prospective Resolution Applicants, arrived at a considerate decision of accepting the Resolution Plan of the appellant in its meeting held on 11/12-2-2020. (Para 30)

- It is trite law that `commercial wisdom' of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by the IBC. It has been consistently held that it is not open to the Adjudicating Authority (the NCLT) or the Appellate Authority (the NCLAT) to take into consideration any other factor other

than the one specified in section 30(2) or section 61(3). It has been held that the opinion expressed by the CoC after due deliberations in the meetings through voting, as per voting shares, is the collective business decision and that the decision of the CoC's 'commercial wisdom' is non-justiciable, except on limited grounds as are available for challenge under section 30(2) or section 61(3). (Para 31)

- No doubt that, under section 61(3)(*ii*), an appeal would be tenable if there has been material irregularity in exercise of the powers by the RP during the corporate insolvency resolution period. However, as discussed hereinabove, no material irregularity is found. (Para 32)

- In the instant case, leave apart, there being any 'material irregularity', there has been no 'irregularity' at all in the process adopted by the RP as well as the CoC. On the contrary, if the CoC would have permitted the PPIPL to participate in the process, despite it assuring the other three prospective Resolution Applicants in its meeting held on 11/12-2-2020, that the absentee prospective Resolution Applicant (PPIPL) would be excluded from participation, it could have been said to be an irregularity in the procedure followed. (Para 34)

- Insofar as the contention of the PPIPL, that the NCLT had already extended the CIRP period by 90 days *vide* order dated 26-2-2020 and therefore, there was no necessity to hastily approve the Resolution Plan of the appellant on 12-2-2020, is concerned, the same is found to be without substance. It will be relevant to mention that the period of 180 days was to expire on 24-2-2020, and therefore, in the meeting dated 12-2-2020 itself, the CoC after resolving to declare appellant as H1 bidder had resolved to authorise the RP to seek an extension of CIRP period before the NCLT. (Para 35)

- It is to be noted that, as has been consistently held by this Court in catena of judgments, the dominant purpose of the IBC is revival of the corporate debtor and making it an ongoing concern. In the instant case, the said purpose is already achieved, inasmuch as all the dues of the financial creditors, *i.e.*, the Allahabad Bank and the Corporation bank, have already been paid, and the corporate debtor, in respect of which CIRP was initiated, is now an ongoing concern. (Para 37)

- It is therefore viewed that the NCLAT has grossly erred in interfering with the decision of the CoC, which was duly approved by the NCLT. The appeals are, therefore, allowed. The impugned judgment and order passed by the NCLAT, dated 19-10-2020 is quashed and set aside. (Para 38)

CASE REVIEW

Panna Pragati Infrastructure (P.) Ltd. v. *Amit Pareek* (2021) 132 taxmann.com 306 (NCLAT - New Delhi) (para 38) *set aside* (***See Annex***).

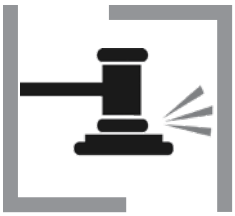
CASES REFERRED TO

Pratap Technocrats (P.) Ltd. v. *Monitoring Committee of Reliance Infratel Ltd.* (2021) 129 taxmann.com 132/167 SCL 508 (SC) (para 17), *K. Sashidhar* v. *Indian Overseas Bank* (2019) 102 taxmann.com 139/152 SCL 312 (SC) (para 31), *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC) (para 31), *Maharashtra Seamless Ltd.* v. *Padmanabhan Venkatesh* (2020) 113 taxmann.com 421/158 SCL 567 (SC) (para 31), *Kalpraj Dharamshi* v. *Kotak Investment Advisers Ltd.* (2021) 125 taxmann.com 194/166 SCL 583 (SC) (para 31), *Ghanashyam Mishra & Sons (P.) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.* (2021) 126 taxmann.com 132/166 SCL 237 (SC) (para 31) and *Keshardeo Chamria* v. *Radha Kissen Chamria* (1953) 4 SCR 136 (para 33).

Mukul Rohatgi, Sr. Adv., **Arvind Kumar Gupta**, Adv., **Ms. Anindita Pujari**, **Ravindra Sadanand Chingale**, AORs, **Abhijeet Sinha**, **Shaunak Mitra**, **Avik Chaudhuri**, Advs. **Soumya Dutta**, AOR, **Siddhartha Srivastava**, **Kavita Bhardwaj**, **Azad Bansala**, Advs. **Rajesh Kumar Gautam**, AOR, **Anant Gautam**, **Nipun Sharma**, **Ravi Solanki**, Advs. **Ms. Ekta Choudhary**, AOR, **Ms. Chakshu Thakral**, **Ms. Purti Gupta**, **Ms. Henna George** and **Ms. Shivani Sharma**, Advs. *for the Appearing Parties.*

† Arising out of order passed by NCLAT New Delhi in *Panna Pragati Infrastructure (P.) Ltd.* v. *Amit Pareek* (2021) 132 taxmann.com 306.

FOR FULL TEXT OF THE JUDGMENT SEE
(2021) 133 taxmann.com 219 (SC)



(2022) 135 taxmann.com 106 (Orissa)

HIGH COURT OF ORISSA

Ferro Alloys Corpn. Ltd. *v.* State of Odisha

DR. S. MURALIDHAR, CJ

AND A.K. MOHAPATRA, J.

CIVIL WRIT PETITION NO. 20286 OF 2020

DECEMBER 10, 2021

Section 31 of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - Whether section 31(1) makes it clear that once approved resolution plan is in place, approved by CoC, it shall be binding on corporate debtor and its employees, members, creditors including Central Government and State Government - Held, yes - Whether therefore, where petitioner underwent a CIRP in which a Resolution Plan had been approved, demands raised against petitioner by Officer of State Government for purpose of issuance of Mining Dues Clearance Certificate (MDCC) and renewal of trading licence which pertained to period prior to Plan Effective date would stand automatically extinguished in terms of approved resolution plan- Held, yes - Whether thus, adirection was to be issued for refund of amounts paid by petitioner under protest for purpose of issuance of MDCC and renewal of trading licence or adjust amount so paid against dues payable by it - Held, yes (Paras 24, 32, 33 and 34)

FACTS

- The petitioner (FACROR) was engaged in the business processing, end use and selling of various minerals and residuals within Orissa. It was required to obtain a trading license from the Mining Officer (Opposite Party No. 3) in terms of rules 4 to 7 of the Orissa Minerals (Prevention of theft, Smuggling &Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007(Mining Rules). On 26-5-2015 the petitioner applied to Opposite Party No. 3 (Mining Officer) for grant of trading license which was then issued to it with a validity period from 25-8-2015 to 24-8-2020.

- Under rule 8(1) of the Mining Rules the licensee was required to be issued with a trading licence renewed 90 days before its expiry. Accordingly, on 22-5-2020 the petitioner preferred an online application to Opposite Party No. 3 for renewal of its licence.

- Opposite Party No. 3 informed the petitioner that it had not furnished a valid Mining Dues Clearance Certificate (MDCC) which was a condition precedent for renewal of the trading licence. Accordingly, the petitioner applied to Director

of Mines (Opposite Party No. 2) for the MDCC.

- It was found that the petitioner underwent a CIRP in which a Resolution Plan (RP) was submitted by SPTL. This was in turn approved by the Committee of Creditors (CoC) of the petitioner and approved by the NCLT on 30-1-2020. The Approved RP (ARP) provided for extinguishment of all claims demands liabilities/ obligations/score payable to any operational creditors (including any State or Central Government authority) by the petitioner for the period prior to the plan effective date which was the date on which the NCLT accepted and approved the RP submitted by the STPL. The petitioner submitted that in terms of the ARP, it was not liable for any liability towards claims made on it *inter alia* by the State Government and/or its departments by issue of demand notices. The petitioner contended that in terms of the ARP all of the aforementioned demand notices stood extinguished.

- Apprehending that it was not being issued by MDCC on account of the outstanding demand notices, the petitioner wrote to the Officers issuing the demand notices about the CIRP and pointed out that in terms of the ARP no payments were due and payable against the demand notices. A letter to the same effect was sent by the petitioner to the concerned Officer to process its application for MDCC.

- With the Opposite Parties failing to act upon the petitioner's request, the petitioner filed the instant petition seeking a direction to the Opposite Party No. 2 to issue it a MDCC and a direction to the Opposite Party No. 3 to renew its trading licence in terms of the Mining Rules. It was further prayed for setting aside order passed by the Directorate of Mines rejecting petitioner's representation for waiving the demand raised against it by virtue of the Resolution Plan approved by the NCLT, by its order dated 30-1-2020. A consequential direction sought was to the Opposite Parties to refund the imposed sum of Rs. 12.02 crores paid by the petitioner under protest or adjust it against the dues payable by the petitioner to the Opposite Parties.

HELD

- The central issue being the alleged outstanding dues owed by FACOR to the Opposite Parties. It is not disputed by the State that the aforementioned demand pertains to the period prior to the `plan effective date' of the Approved Resolution Plan (ARP). As pointed out in the rejoinder affidavit, the ARP also talks about `Government dues' which fall within the definition of `operational debt' as indicated in section 5 (21)(Para 23)

- Section 31(1) further makes it clear that once the ARP is in place, approved by the CoC, it shall be

binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government `to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan...'.(Para 24)

- Indeed, Opposite Party No. 2 as an Officer of the State Government is equally bound by the ARP. He is precluded from raising any demand for a period prior to the Plan Effective Date. The legal position in this regard is well settled. In Committee of *Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC), the Supreme Court of India held that under section 31(1), once the CoC approves the resolution plan, it binds all the stakeholders. (Para 25)

- The plea of the Opposite Parties that the State Authorities were unable to file their respective claims before the NCLT in the sum of Rs. 205 crores, since it has not finalized and in any event NCLT is not competent to decide the legality of the demands is untenable. Under section 3(6) a `claim' *inter alia* includes `a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, weaken, equitable secured or unsecured'. (Para 26)

- In terms of section 31, the ARP is binding on all creditors including Central Government and the State Government. Since all of the impugned demands raised against FACOR pertain to the period prior to the Plan Effective date i.e. 31-1-2020, all such demands stand automatically extinguished in terms of the ARP.(Para 32)

- In that view of the matter, the impugned demand raised against the petitioner by the Opposite Parties on the strength of the decision of the Supreme Court in *Common Cause (A Registered Society)* v. *Union of India* (2017) 77 taxmann.com 245/245 Taxman 214/394 ITR 220 are unsustainable in law and are hereby set aside. Consequently, a direction is issued to the Opposite Parties to refund the amounts paid by the petitioner under protest for the purpose of issuance of the MDCC and renewal of the trading licence. (Para 33)

- For the reasons explained here-inbefore, the following directions are issued:

  (*a*) the demand notices stands quashed;

  (*b*) with the quashing of the impugned demand notices, a direction is issued to the Opposite Parties either to refund to the petitioner the amounts paid by it under protest or adjust the amount so paid in the sum of Rs. 12.02 crores against the dues

payable by it to the Opposite Parties in future against undisputed amounts.(Para 34)

- The writ petition is disposed of in the above terms.(Para 35)

CASE REVIEW

Common Cause v. *Union of India* (2017) 7 SCC 499 (para 33) *followed.*

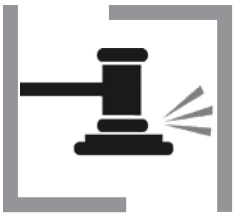
BPL Ltd. v. *R. Sudhakar* (2004) 7 SCC 219 (para 31) *distinguished.*

CASES REFERRED TO

Common Cause v. *Union of India* (2017) 7 SCC 499 (para 13), *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC) (para 25), *Union of India* v. *Association of Unified Telecom Service Providers of India* (2020) 119 taxmann.com 26 (SC) (para 27), *BPL Ltd.* v. *R. Sudhakar* (2004) 7 SCC 219 (para 27), *Ghanashyam Mishra & Sons (P.) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.* (2021) 126 taxmann.com 132/166 SCL 237 (SC) (para 28), *Maharashtra Seamless Ltd.* v. *Padmanabhan Venkatesh* (2020) 113 taxmann.com 421/158 SCL 567 (SC) (para 28), *Innovative Industries Ltd.* v. *ICICI Bank Ltd.* (2017) 84 taxmann.com 320/143 SCL 625 (SC) (para 28) and *K. Sashidhar* v. *Indian Overseas Bank* (2019) 102 taxmann.com 139/152 SCL 312 (SC) (para 28).

A. Vasist, Sr Adv. and **S.K. Acharya**, Adv. *for the Petitioner.* **P.K. Muduli**, Addl. Government Advocate *for the Respondent.*

FOR FULL TEXT OF THE JUDGMENT SEE
(2022) 135 taxmann.com 106 (Orissa)



(2021) 133 taxmann.com 184 (Delhi)

HIGH COURT OF DELHI

Nitin Jain Liquidator PSI Ltd. *v.* Enforcement Directorate

YASHWANT VARMA, J.

W.P.(C) 3261 OF 2021

CM APPLS. NOS. 32220, 41811, 43360, 43380 OF 2021

DECEMBER 15, 2021

Section 32A of the Insolvency and Bankruptcy Code, 2016, read with section 5 of the Prevention of Money Laundering Act, 2002 - Liability for prior offences, etc. - Whether section 32A(2) of IBC only protects property of corporate debtor in liquidation from provisional attachment by ED under section 5 of PMLA in respect of money laundering offences committed prior to commencement of CIRP - Held, yes - Whether however, it does not make Liquidator of corporate debtor immune from answering to requests for information that may be directed towards him by investigating authorities under PMLA - Held, yes (Para 100)

FACTS

- The corporate debtor was admitted to the Corporate Insolvency Resolution Process (CIRP) and Resolution Professional was appointed by the Committee of Creditors. Since no viable expression of interest was received, the Committee of Creditors in its meeting passed a resolution recommending the liquidation of the corporate debtor. That resolution was backed by 93.43 per cent of the creditors opining that the corporate debtor was liable to be liquidated in accordance with the provisions made in that regard under the IBC. It was in the aforesaid backdrop that the application made by the petitioner RP for liquidation of the corporate debtor and said application was allowed by the Adjudicating Authority.

- Upon the petitioner being appointed as the Liquidator, the first sale notice was issued. However, the same did not culminate in any offer coming to be accepted. Subsequently, the Liquidator received the summons from Enforcement Directorate for attachment of assets of corporate debtor.

- Pursuant to the directions issued the petitioner moved an application before instant Court disclosing that the assets and properties of the corporate debtor were placed for disposal by way of an e-auction initiated in accordance with the provisions of the IBC and after due sanction of the Adjudicating Authority. The Liquidator apprised the Court that, amongst the various options of sale prescribed, the sale of the corporate debtor as a going concern was the recourse

adopted received, a revised sale Notice came to be published and the same had also been placed on the record. In the sale a bid of Rs. 425.50 crores was received from resolutions applicant `LHPL' which proposed to take over the assets of the corporate debtor and continue its functioning as a going concern.

- The petitioner assails the action taken by the respondent in purported exercise of powers conferred by the PMLA principally on the anvil of section 32A. On ground that the jurisdiction and authority of the respondent under the PMLA is legislatively mandated to cease once a resolution plan is approved by the Adjudicating Authority or the sale of liquidation assets commences. It is further contended that section 32A clearly mandates that no action shall be taken against the properties of the corporate debtor, once a resolution plan comes to be approved or the corporate debtor undergoes liquidation. (Para 10)

HELD

- The SOA of Act 1 of 2020 alludes to the need to ensure that the successful bidder is kept immune from the liabilities attached to the commission of an offense by the corporate debtor prior to the commencement of the CIRP under certain circumstances. The SOA in more explicit terms alludes to section 32A when it records that it is intended "to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions. (Para 42)

- The SOA as well as the contemporaneous material referred to above, indubitably establish a conscious adoption of a legislative measure to insulate the resolution applicant from the prospect of prosecution in respect of offenses that may have been committed by the erstwhile management of the corporate debtor prior to commencement of the CIRP. This legislative guarantee stands enshrined in section 32A(1). Similarly, the provision unmistakably also insulates the property of the corporate debtor from any action that may otherwise be taken in respect thereof for an offense committed prior to the commencement of the CIRP. A close reading of section 32A (1) and (2) establishes that the legislature in its wisdom has erected two unfaltering barriers. It firstly prescribes that the offense, which may entail either prosecution of the debtor or proceedings against its properties, must be one which was committed prior to the commencement of the CIRP. Secondly the cessation of liability for the offense committed is to occur the moment when a resolution is approved by the Adjudicating Authority or upon sale of liquidation assets. The provision in unequivocal terms terminates

the prospect of prosecution or coercive action against properties on the happening of either of two critical events:- (a) the date from which a resolution plan comes to be approved by the Adjudicating Authority, or (b) the sale of liquidation assets. (Para 44)

- Undisputedly and as has been explained in the decisions of the Supreme Court noticed above, maximization of value would be clearly impacted if a resolution applicant were asked to submit an offer in the face of various imponderables or unspecified liabilities. The amendment to sub-section (1) of section 31 and the introduction of section 32A undoubtedly seek to allay such apprehensions and extend an assurance of the resolution applicant being entitled to take over the corporate debtor on a fresh slate. Section 32A assures the resolution applicant that it shall not be held liable for any offense that may have been committed by the corporate debtor prior to the initiation of the CIRP. It similarly extends that warranty in respect of the properties of the corporate debtor once a resolution plan stands approved or in case of a sale of liquidation assets. (Para 49)

- The principal consideration which appears to have weighed was the imperative need to ensure that neither the resolution nor the liquidation process once set into motion and fructifying and resulting in a particular mode of resolution coming to be duly accepted and approved, comes to be bogged down or clouded by unforeseen or unexpected claims or events. The IBC essentially envisages the process of resolution or liquidation to move forward unhindered. (Para 50)

LIQUIDATION UNDER THE IBC

- The Adjudicating Authority upon being moved by the RP in this respect and on being informed either that a resolution plan has not been received at all or that one that may have been received has come to be rejected or upon being apprised that the Committee of Creditors have opined that no resolution is possible, may proceed to pass an order of liquidation. The date on which such an order is passed is defined under section 5(17) of the Act to mean the 'liquidation commencement date'. Amongst the various powers and duties that stand conferred upon the Liquidator, is the power to sell the movable and immovable assets of the corporate debtor. (Para 53)

- The Liquidator in terms of the provisions engrafted in section 36 is obliged to form a corpus comprising of various assets of the corporate debtor which constitutes the 'liquidation estate'. The Liquidator is then by law mandated to collect and consolidate all claims of creditors that maybe received pursuant to the public

announcement of its liquidation. (Para 54)

- The functions of the Liquidator and the various steps that he is obliged to take are more elaborately spelt out in the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. (Para 54)
- Having traversed the IBC and the salient provisions of that code, it would now be pertinent to advert to the relevant provisions of the PMLA. (Para 62)
- The PMLA essentially represents the commitment of the Union to frame a comprehensive legislation to deal with the pernicious crime of money laundering as flowing from the Political Declaration and Global Programme of Action as adopted by the General Assembly of the United Nations on 23 February 1990, the Political Declaration adopted in the Special Session of the U.N. between 8 to 10 June 1998, the Financial Action Task Force held in Paris from 14 to 16 July 1989. Taking cognizance of the scourge of money laundering faced by Governments across the globe and the legitimization of moneys derived from criminal activities as well as the imperative need to deprive the perpetrators of such action of the fruits derived from such activities, lead to the Government introducing the Prevention of Money- laundering Bill, 1998 in Parliament. The PMLA ultimately came to be enforced with effect from 1 July 2005. (Para 63)
- As is manifest from a reading of the long title of the PMLA, it has essentially been promulgated to prevent money laundering and to provide for confiscation of property derived from or involved in the crime of money laundering. The expression 'proceeds of crime' has been defined in section 2(*u*) of the PMLA to mean any property derived or obtained whether directly or indirectly by a person as a result of criminal activity relating to a scheduled offence or the value of any such property and where such property is taken or held outside the country, then property equivalent in value thereto. (Para 64)

ISSUE OF PRIMACY

- The discussion on the issue of the overriding effect of the two competing statutes as urged by respective parties, must be prefaced with the acknowledgement of the fact that both the PMLA as well as IBC employ *non obstante* clauses by virtue of sections 71 and 238 respectively. Both statutes, admittedly, are legislations promulgated by Parliament in 2005 and 2016. Both enactments have undergone recent amendments with PMLA seeing the passing of Finance (No. 2) Act, 2019 and the IBC which was amended by virtue of Act 1 of 2020 pursuant to which section 32A came to be included in the statute book. It, therefore, cannot possibly be

presumed that the legislature was oblivious of the reach and ambit of the two enactments. The submissions canvassed by respective sides on this score must be evaluated firstly on the well settled precept of the Court identifying the core and fundamental purport and object of the statutes. This principle obliges the Court to examine and decipher the intent and objective of the statute, the essential subject of legislation and the field of activities that it seeks to regulate. While discharging that burden, especially when dealing with two statutes which may independently employ a legislative command for their provisions to have effect notwithstanding anything to the contrary contained in any other law, the first question that must be answered is whether there is in fact an element of irreconcilability and incompatibility in the operation of the two statutes which cannot be harmonized. The issue of incompatibility in the operation of two statutes should not be answered on a mere perceived or facial examination of their provisions, but on a deeper and meticulous scrutiny and evaluation of the operation of the competing provisions and the subject that is sought to be regulated. (Para 73)

- It is evident that the two statutes essentially operate over distinct subjects and subserve separate legislative aims and policies. While the authorities under the IBC are concerned with timely resolution of debts of a corporate debtor, those under the PMLA are concerned with the criminality attached to the offense of money laundering and to move towards confiscation of properties that maybe acquired by commission of offenses specified therein. The authorities under the aforementioned two statutes consequently must be accorded adequate and sufficient leeway to discharge their obligations and duties within the demarcated spheres of the two statutes. (Para 85)

- In a case where in exercise of their respective powers a conflict does arise, it is for the Courts to discern the legislative scheme and to undertake an exercise of reconciliation enabling the authorities to discharge their obligations to the extent that the same does not impinge or encroach upon a facet which stands reserved and legislatively mandated to be exclusively controlled and governed by one of the competing statutes. (Para 86)

- In any event, the issue of reconciliation between the IBC and the PMLA insofar as the present petition is concerned, needs to be answered solely on the anvil of section 32A. Once the Legislature has chosen to step in and introduce a specific provision for cessation of liabilities and prosecution, it is that alone which must govern, resolve and determine the extent to which

powers under the PMLA can be permitted in law to be exercised while a resolution or liquidation process is ongoing. (Para 87)

- Having traversed the scheme and objectives of the two legislations, the significant decisions rendered and the legislative backdrop in which section 32A came to be inserted, the stage is now set to deal with the principal contention as urged on behalf of the respondent. (Para 88)

THE RESOLUTION AND LIQUIDATION CAUSE WAYS

- 'Resolution' and 'liquidation' constitute two separate and distinct tracks under the IBC. While the former is governed by the provisions enshrined in Chapter II, the process of liquidation is to be initiated and completed in accordance with Chapter III. The process of resolution envisages the identification of a resolution applicant whose proposal is found viable to resurrect the corporate debtor and complies with the statutory prerequisites set forth in section 30. The resolution plan must necessarily provide for the payment of the insolvency resolution costs, the debts owed to operational and other creditors, provide for the management of the affairs of the corporate debtor and is otherwise found to conform to other requirements that may be specified and does not contravene the provisions of the law. Once that plan is accepted by the requisite majority of the Committee of Creditors as contemplated under section 30(4), it is placed before the Adjudicating Authority for its approval in terms of section 31. (Para 89)

- In any case, what needs to be appreciated and highlighted is that under both sets of regulations noticed above, the measures to be adopted under regulation 32 or 37 in order to liquidate the debts of the corporate entity and to revive it if possible, cannot be accomplished or completed on the mere approval of the resolution plan or acceptance of one of the methods permissible under those Regulations. The sale of the whole or part of the assets, the restructuring of the corporate debtor, the acquisition or transfer of its shares, its merger or consolidation are neither envisaged nor mandated to be measures which must stand completed or accomplished on the date when the resolution plan is approved. This necessarily since the resolution plan is the repository of the steps or measures that are accepted and recommended by the Committee of Creditors and then placed for the approval of the Adjudicating Authority. It is only once that resolution plan stands approved that the question of further steps for implementation of the mode adopted would logically arise. This is further buttressed from the provisions contained in section 31(4) which makes provision for

a situation where the mode of resolution accepted and approved may require approval under an independent statute. It is while factoring in that eventuality that sub-section (4) proceeds to prescribe the outer timeline of one year from the date of approval of the resolution plan for obtaining all requisite approvals. A similar situation would obtain where a corporate debtor while in liquidation is sold as a going concern. Here also regulation 44 of the Liquidation Regulations, 2016 provides for the completion of the liquidation process within one year from the date of its commencement or within further extended time as contemplated under the Proviso thereto and additionally under regulation 44(2). In any case, it cannot be viewed as ceasing to exist in the eyes of law merely upon a resolution plan coming to be approved. (Para 93)

- Identically, where a corporate debtor undergoing liquidation under Chapter III, it continues to exist as an entity till such time as it is fundamentally rearranged or altered consequent to the implementation of the procedure of settlement of its affairs as contemplated under the plan approved by the Adjudicating Authority. It would be tenuous if not incorrect to premise a distinction between the procedures contemplated under Chapters II and III for the purposes of ascertaining the trigger point for section 32A. That then leads the Court to answer the principal issue which falls for determination, namely, the meaning to be assigned to the phrase 'sale of liquidation assets' as employed in section 32A(2). (Para 94)

SECTION 32A AND THE DEFINING MOMENT

- The answer to determining when the bar under section 32A would come into play must be answered bearing in mind the ethos of section 32A and upon an interpretation of the provisions of the IBC and the Regulations framed thereunder. As is evident from a careful reading of section 32A(2), the Legislature in its wisdom has provided that no action shall be taken against the properties of the corporate debtor in respect of an offense committed prior to the commencement of the CIRP and once either a resolution plan comes to be approved or when a sale of liquidation assets takes place. The intent of the mischief sought to be addressed is clearly borne out from the Committee Reports as well as the SOA. The principal consideration which appears to have weighed was the imperative need to ensure that neither the resolution nor the liquidation process once set into motion and fructifying and resulting in a particular mode of resolution coming to be duly accepted and approved, comes to be bogged down or clouded by unforeseen or

unexpected claims or events. The IBC essentially envisages the process of resolution or liquidation to move forward unhindered. The Legislature in its wisdom has recognised a pressing and imperative need to insulate the implementation of measures for restructuring, revival or liquidation of a corporate debtor from the vagaries of litigation or prosecution once the process of resolution or liquidation reaches the stage of the Adjudicating Authority approving the course of action to be finally adopted in relation to the corporate debtor. Section 32A legislatively places vital import upon the decision of the Adjudicating Authority when it approves the measure to be implemented in order to take the process of liquidation or resolution to its culmination. It is this momentous point in the statutory process that must be recognised as the defining moment for the bar created by section 32A coming into effect. If it were held to be otherwise, it would place the entire process of resolution and liquidation in jeopardy. Holding to the contrary would result in a right being recognised as inhering in the respondent to move against the properties of the corporate debtor even after their sale or transfer has been approved by the Adjudicating Authority. This would clearly militate against the very purpose and intent of section 32A. It becomes pertinent to recollect that one of the primary objectives which informed the introduction of this provision was to assure the resolution applicant that its offer once accepted would stand sequestered from action for enforcement of outstanding claims against the corporate debtor or from penalties connected with offenses committed prior thereto. The imperative for the extension of this legislative guarantee subserves the vital aspect of maximization of value. (Para 96)

- Section 32A in unambiguous terms specifies the approval of the resolution plan in accordance with the procedure laid down in Chapter II as the seminal event for the bar created therein coming into effect. Drawing sustenance from the same, it is concluded that the approval of the measure to be implemented in the liquidation process by the Adjudicating Authority must be held to constitute the trigger event for the statutory bar enshrined in section 32A coming into effect. It must consequently be held that the power to attach as conferred by section 5 of the PMLA would cease to be exercisable once any one of the measures specified in regulation 32 of the Liquidation Regulations, 2016 comes to be adopted and approved by the Adjudicating Authority. The expression 'sale of liquidation assets' must be construed accordingly. The power otherwise vested in the respondent under the PMLA to provisionally attach or move against the properties of the corporate debtor would stand foreclosed once

the Adjudicating Authority comes to approve the mode selected in the course of liquidation. To this extent and upon the Adjudicating Authority approving the particular measure to be implemented, the PMLA must yield. The Court also bears in mind that the bar that stands created under section 32A operates and extends only insofar as the properties of the corporate debtor are concerned. That statutory injunct does not apply or extend to the persons in charge of the corporate debtor or the rights otherwise recognised to exist and vested in the respondent to proceed against other properties as was explained by the Judge in Axis Bank. (Para 98)

- In closing, it maybe additionally noted that the Liquidator though obliged to administer and oversee the affairs of the corporate debtor in accordance with the provisions of the IBC, cannot strike a position of not co-operating with the competent authorities under the PMLA. Regard must be had to the fact that upon appointment, the Liquidator steps into the shoes of the erstwhile management and is the custodian of the properties and all relevant papers and documents relating to the corporate debtor. That material and any other information that maybe gathered and collated by the Liquidator may be of significance and import to the investigation being undertaken under the PMLA. Viewed in that background, it would be necessary to recognize the obligation of the Liquidator to provide such material and other information that maybe required. The Liquidator cannot strike the position of being immune from answering to the requests for information that maybe directed towards him by the investigating authorities under the PMLA. (Para 100)

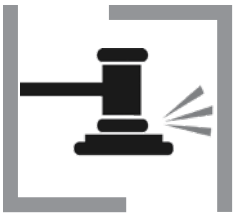
CASES REFERRED TO

Manish Kumar v. *Union of India* (2021) 123 taxmann.com 343 (SC) (para 10), *JSW Steel* v. *Mahendra Kumar Khandelwal* (2020) 117 taxmann.com 624 (NCL-AT) (para 11), *State Bank of India* v. *Deputy Director Directorate of Enforcement* 2017 SCC Online ATP MLA 4 (para 12), *Deputy Director Directorate of Enforcement Delhi* v. *Axis Bank* (2019) 104 taxmann.com 49 (Delhi) (para 18), *Embassy Property Development (P.) Ltd.* v. *State of Karnataka* (2019) 112 taxmann.com 56/(2020) 157 SCL 445 (SC) (para 19), *Varrsana Ispat Ltd.* v. *Deputy Director Directorate of Enforcement* (2019) 108 taxmann.com 96/155 SCL 48 (NCL-AT) (para 20), *Valji Khianji & Co.* v. *Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd.* (2008) 86 SCL 81 (SC) (para 30), *Pattam Khader Kham* v. *Pattam Sardar Khan* (1996) 5 SCC 48 (para 32), *Ghanashyam Mishra & Sons (P.) Ltd.* v. *Edelweiss Asset Reconstruction Co.* (2021) 126 taxmann.com 132/166 SCL 237 (SC) (para 39), *Committee of Creditors of Essar Steel Ltd.* v. *Satish Kumar Gupta* (2019) 111 taxmann.com 234 (para 47), *Innoventive Industries Ltd.* v. *ICICI Bank* (2017) 84 taxmann.com 320 (SC) (para

74) and *Swiss Ribbons (P.) Ltd.* v. *Union of India* (2019) 101 taxmann.com 389/152 SCL 365 (SC) (para 75).

Kirti Uppal, Sr. Adv. **Aditya Gauri, Amar Vivek, Ms. Riya Gulati, Ms. Maneesha Dhir, Ms. Varsha Banerjee** and **Kanishk Khetan**, Advs. *for the Applicant.* ***Zoheb Hossain, Standing Counsel, Ms. Tulika Gupta,*** Adv., **Neeraj Malhotra**, Sr. Adv., **R.P. Agrawal, Ms. Manisha Agrawal, Priyal Modi, Ujjaval Kumar** and **Nimish Kumar,** Advs. *for the Respondent.*

FOR FULL TEXT OF THE JUDGMENT SEE
(2021) 133 taxmann.com 184 (Delhi)



(2022) 135 taxmann.com 109 (NCLAT - New Delhi)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Axis Bank Ltd. *v.* Value Infracon India (P.) Ltd.

ANANT BIJAY SINGH, JUDICIAL MEMBER

AND MS. SHREESHA MERLA, TECHNICAL MEMBER

I.A. NOS. 1502 AND 1503 OF 2020†

COMPANY APPEAL (AT) (INSOLVENCY) NO. 582 OF 2020

DECEMBER 20, 2021

Section 5(8), read with section 7, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Financial debt - Whether where appellant/bank sanctioned housing loans to some of home buyers/allottees who had purchased flats/units in a residential project floated by corporate debtor, since liability to repay home loan was on individual home buyers, appellant/bank could not be considered as 'secured financial creditor' - Held, yes (Paras 16-17)

FACTS

- The application to initiate Corporate Insolvency Resolution Process under section 7 against Corporate debtor was admitted. The appellant/bank submitted its claims as a 'secured financial creditor' on grounds that it had sanctioned loans to home buyers/allottees who had purchased units/flats, in project floated by corporate debtor but same was rejected by IRP, and thereafter an application was filed before Adjudicating Authority. The Adjudicating Authority by impugned order rejected the application.
- On appeal, the appellant stated that he had advanced loan to 42 home buyers, out of which, the appellant had filed recovery applications against 41 allottees as well as the corporate debtor before the DRT for recovery of debts.
- According to appellant, it holds the decree in its favour from DRT against 31 allottees as well as corporatre debtor.
- According to appellant, the successful resolution applicant claim waiver from existing security/lien to be created over the flats in favour of the appellant by considering the claims of home buyers and in this situation the appellant would neither get any money nor security for it, as invested by granting loans to home buyers.
- The appellant further claimed that the allottees are getting the refund

of their money under the resolution plan in settlement of their claims, and there was possibility that the home buyers would not deposit these amounts with the appellant banks in settlement of their dues, despite the fact that the said flat had already been acknowledged by the corporate debtor in it separate permission to mortgage letter issued to the appellant at the time of disbursement of the loans.

- The corporate debtor submitted that there was no document which had been signed by all the three parties. The liability to repay loan was on the individual home buyers as stated in the tripartite agreement. The recovery certificate from DRT had also been obtained by misleading DRT by pleading that the flats are mortgaged with the appellants.

HELD

- The central point in this Appeal is whether the appellant/Axis Bank can be considered as a 'financial creditor' on account of its having sanctioned and released housing loans to some of the allottees who have purchased flats/units in the project floated by the 'corporate debtor'. (Para 7)
- It is not disputed that Axis Bank has sanctioned loans to 44 home buyers/ allottees who have purchased units/flats, in the project floated by the 'corporate debtor'. Home buyers were included as 'financial creditors' *vide* amendment dated 6-6-2018. (Para 8)
- It is clear from the principle laid down by the Supreme Court in *'Pioneer Urban Land & Infrastructure Ltd.* v. *Union of India* (2019) 108 taxmann.com 147/155 SCL 622 that it is the home buyer who should be considered as 'financial creditors' of the 'corporate debtor' whether he has self financed his flat or has exercised his choice of taking a loan from the bank. (Para 10)
- Additionally, as per section 77 of the Companies Act, 2013 every security interest has to be registered with the Registrar within 30 days of its creation and admittedly no 'charge' has been created against any of the property of the 'corporate debtor' in favour of the appellant. (Para 11)
- It is not denied that there is no registered 'charge' created on the asset or property as contemplated under section 77 of the Companies Act, 2013. (Para 11)
- Further, there is no submission made on behalf of the bank as to whether any steps were taken under section 78 of the Companies Act, 2013. (Para 11)
- A perusal of the documents shows that none of the home buyers appeared in any of the proceedings before the DRT whereby the recovery certificates were obtained. (Para 12)

- It mere `Permission to Mortgage' is of no relevance in the absence of not having `registered a charge' under section 77 of the Companies Act, 2013. (Para 13)

- The relevant clause of the tripartite agreement entered into between the home buyers, the developer and the appellant/Axis Bank is reproduced. (Para 14)

- It can be seen from the material on record that Axis Bank had rendered financial assistance for the purpose of booking units in the project floated by the `corporate debtor' and had a tie-up with the `corporate debtor' for procuring business from the home allottees. The home loan agreements in these cases were made individually by the borrowers. As per standing instructions, the money in the account of the home allottees was disbursed automatically to the `corporate debtor'. Tripartite agreement is only by way of security that the developer would withhold the allotment in the event of default by the allottee. The bank had sought security by creating mortgage of the residential units for the loans availed by the home buyers and the `corporate debtor' had given permission for the same to enable the home buyer to procure financial assistance. (Para 15)

- From the clause in the tripartite agreement entered into between the home buyer, the Axis Bank and the `corporate debtor', it is evident that in case of any default by the borrower, the bank would have the right to write to the builder for cancellation of agreement executed between the developer and the borrower, whereafter the bank shall have the right to pay the sale consideration and get the subject property registered. There is no material on record to evidence that any such cancellation has taken place. The home loan agreement read with the demand letters and the allotment letter clearly specify that when there is a `default' on behalf of the home allottee a penalty interest would have to be paid by the allottee to the Bank. Therefore, the `default' aspect is to be seen vis-a-vis the home allottee and the appellant bank only. It is contended by the respondent that though the allotment letter shows that the payments were construction linked, the bank released the entire amount prior to completion of construction. (Para 16)

- It was found that this subject matter cannot be viewed from such a narrow compass. It is definitely not the scope and objective of the code to include banks/financial institutions which have advanced loans to home buyers to be considered as `financial creditors' and included in the CoC, specifically in the light of the fact the liability to repay the home loan is on the individual home buyers. This would defeat the very spirit and objective of

the code aiming at resolution and maximisation of the assets of the 'corporate debtor'. Presence of a mere tripartite agreement does not change the character of the amount borrowed by the home buyer vis-a-vis the Bank and vis-a-vis the 'corporate debtor'. Viewed from any angle, the appellant cannot be included as a 'Secured Financial Creditor' in this case and hence no reasons to interfere with the well-reasoned order of the Adjudicating Authority. (Para 17)

- From all the aforenoted reasons, this appeal fails and is accordingly dismissed. (Para 18)

CASE REVIEW

Pioneer Urban Land & Infrastructure Ltd. v. *Union of India* (2019) 108 taxmann.com 147/155 SCL 622 (SC)and *Indiabulls Housing Finance Ltd.* v. *Samir Kumar Bhattacharya, Resolution Professional of Network Industries Ltd.* (Co. Appeal (AT) (Insolvency) No. 830 of 2019, dated 18-12-2019) (paras 10 and 11) *followed*.

Daimler Financial Services (P.) Ltd. v. *Value Infracon India (P.) Ltd.* (2022) 135 taxmann.com 108 (NCLT - New Delhi) (para 17) *affirmed* (***See Annex***).

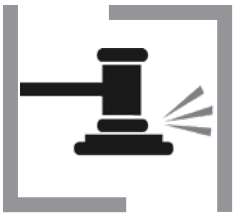
CASES REFERRED TO

Pioneer Urban Land & Infrastructure Ltd. v. *Union of India* (2019) 108 taxmann.com 147/155 SCL 622 (SC) (para 4) and *Indiabulls Housing Finance Ltd.* v. *Samir Kumar Bhattacharya, Resolution Professional of Network Industries Ltd.* (Co. Appeal (AT) (Insolvency) No. 830 of 2019, dated 18-12-2019) (para 11).

Sharad Tyagi, **Ms. Yukti Makan** and **Ms. Gayatri**, Advs. *for the Appellant*. **Sanjay Kumar Singh**, RP and **Neeraj Kumar Gupta**, Adv. *for the Respondent*.

† Arising out of Order of NCLT, New Delhi in *Daimler Financial Services (P.) Ltd.* v. *Value Infracon India (P.) Ltd.* (2022) 135 taxmann.com 108.

FOR FULL TEXT OF THE JUDGMENT SEE
(2022) 135 taxmann.com 109 (NCLAT- New Delhi)



(2022) 135 taxmann.com 107 (NCLT - Mum.)

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

Union Bank of India *v.* Ms. Vandana Garg

PRADEEP NARHARI DESHMUKH, JUDICIAL MEMBER

AND KAPAL KUMAR VOHRA, TECHNICAL MEMBER

IA NOS. 2025, 2028 AND 2035 OF 2021

CP NO. 1137/MB/2017 DECEMBER 23, 2021

Section 30, read with section 53, of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Resolution plan - Submission of - Whether resolution plan once approved by Adjudicating Authority shall stand frozen and binding on all stakeholders including financial creditors - Held, yes - Whether section 30(2)(b) provides for payment of debts of dissenting financial creditors in such manner as may be specified by Board, which shall not be less than amount to be paid to such creditors in accordance with section 53(1) in event of liquidation - Held, yes -Whether Explanation 1 to section 30(2)(b) further clarifies that distribution in accordance with provisions of this clause shall be fair and equitable to such creditors - Held, yes - Whether where invocation of bank guarantee was as per terms of resolution plan and decision to include invoked amount of bank guarantee to fund-based debts was a commercial decision of CoC, any increase in claim amount of assenting financial creditors due to invocation of such bank guarantee could not be a ground for challenge by dissenting financial creditors on grounds of discrimination - Held, yes (Paras 6, 7 and 9)

CASES REFERRED TO

Sharad Sanghi v. *Ms. Vandana Garg* (2019) 104 taxmann.com 299/153 SCL 87 (NCL-AT) (para 2), *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* (2019) 111 taxmann.com 234 (SC) (para 2), *Central Bank of India* v. *Resolution Professional of the Sirpur Paper Mills Ltd.* (Company Appeal No. 526 of 2018, dated 12-9-2018) (para 2) and *Ghanashyam Mishra & Sons. (P.) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.* (2021) 126 taxmann.com 132/166 SCL 237 (SC) (para 8).

Rathina Maravarman, Darshti Dave, Ativ Patel, Harshad Vyas, Salonee Kulkarni, Sagar Dhawan, Aishani Das, Rohan Agarwal, Rajeev Pandey, Ruben Mascreen and Malak Bhatt, Advs. *for the Appearing Parties.*

ORDER

Pradeep Narhari Deshmukh, Judicial Member. - Application IA 2025 has been filed by Union Bank of India (Dissenting Financial Creditor), IA 2028 has been filed by Bank of Maharashtra (Abstaining Financial Creditor) and IA 2035 has been filed by Central Bank of India (Dissenting Financial Creditor) who have prayed that

the discrimination in payment under the Resolution Plan on the basis of the Assenting and Dissenting/Abstaining Financial Creditor be modified to the extent that all Secured Financial Creditors (FCs) *inter alia* Applicants be treated equally for payment of plan value subject to their individual exposure with the same terms as that of Assenting FCs.

2. Facts as submitted by Applicants, among others:

(*a*) The Company Petition (CP 1137 of 2017) filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking Corporate Insolvency Resolution Process (CIRP) of Jyoti Structures Limited (Corporate Debtor) was admitted by this bench on 4-7-2017. Thereafter, the Committee of Creditors (CoC) was constituted and the 1st CoC meeting was held on 10-8-2017 in which 32 FCs *inter alia* the applicants herein (Union Bank of India, Bank of Maharashtra, Central Bank of India) participated.

(*b*) During CIRP, Mr. Sharad Sanghi (Resolution Applicant) had submitted a Resolution Plan along with others. Firstly, Resolution Plan was approved with 62.6% of CoC Members on 27-3-2018. After reviewing the outcome, three creditors changed their voting from Dissenting to Assenting and in addition, one more creditor who abstained on 27-3-2018 assented in favour of Resolution Plan. Thus, four more creditors constituting about 19% of CoC members made up their mind after 27-3-2018 to vote in favour of the Resolution Plan. CIRP expired on 2-4-2018. On 6-4-2018, Resolution Plan was approved with more than 81% of voting shares.

(*c*) Resolution Professional approached this Bench for approval of Resolution Plan and the same was rejected by this bench *vide* its order dated 31-7-2018 as CIRP had expired by the date of approval. Thereafter, Resolution Applicant preferred an Appeal in *Sharad Sanghi* v. *Ms. Vandana Garg* (2019) 104 taxmann.com 299/153 SCL 87 (NCL-AT) before NCLAT and the same was allowed on 19-3-2019 observed that :

> *"In the Result, the case is remitted to the Adjudicating Authority, Mumbai Bench, Mumbai to approve the plan in terms of Section 31 of the Insolvency and Bankruptcy Code, 2016 with modification i.e. that the plan is to be implemented within the period of 12 years as offered by the 'Successful Resolution Applicant'."*

Subsequently this Bench approved the Resolution Plan *vide* its order dated 27-3-2019.

(*d*) Applicant further submits that in the approved Resolution Plan, there is glaring inequality in the payment between the Assenting/ Dissenting FCs and Operational Creditors (OCs). OCs are paid 10% more than that of the Dissenting/ Abstaining FCs and Assenting FCs are getting around 18 times more under the Resolution Plan.

(*e*) The Apex Court in the matter of *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* (2019) 111 taxmann.com 234 held that, "equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secure or unsecure, financial or operational". Therefore, although Section 30(2) b)(*ii*) provides for liquidation value to be given to Dissenting FCs but that does not mean there shall be any Discrimination between the Dissenting and Assenting Creditors under similar class.

(*f*) Applicant submitted judgment in the matter of *Central Bank of India* v. *Resolution Professional of the Sirpur Paper Mills Ltd.* (Company Appeal (AT) Insolvency No. 526 of 2018, dated 12-9-2018) where it was pointed out that Code nowhere intends to discriminate between Assenting and Dissenting FCs.

(*g*) Hence Applicant filed present Applications on 21-9-2021 to modify the payment under Resolution Plan to the extent that all Secured FCs are treated equally for payment of Plan value subject to their individual exposure with the same terms as that of Assenting FCs.

3. On 6-12-2021, Respondent 3 (Monitoring Committee) filed an Affidavit in reply in all three Applications stating that :

i. Applications have been filed 2.5 years after approval of Resolution Plan.

ii. Applications are not maintainable, as AA has no jurisdiction to modify the approved Resolution Plan.

iii. Distribution mechanism under the Resolution Plan is a commercial decision of CoC.

iv. Dissenting FCs are paid the liquidation value as per the terms of the Resolution Plan and in accordance with the provisions of the Code.

v. Applicants are being paid the liquidation value which is as per the terms of the approved Resolution Plan.

vi. Bank Guarantee (BG) invocation and the revision in the amounts of Assenting FCs are as per the terms of the Resolution Plan. Clause F (3) of the Resolution Plan specifically mentions that if a BG is issued by the lender and invoked after the approval of Resolution Plan by the AA, then the said invoked amount shall be added to the fund based debts extended by the issuing bank and Net Present Value (NPV) of the invoked BG amount will be added to the NPV of the overall amount of 3,674 crores payable to the Secured FCs. Clause F (3) of the Resolution Plan is reproduced below:

"F. Bank Guarantee/Letter of Credit Limits:

3. In case any BG/LC issued on behalf of the Company is invoked by the beneficiary after the date of the approval of the Final Resolution Plan

by the NCLT, the Company will be liable to make good such invocation to the issuing bank as follows :

(*a*) If the BG/LC was issued prior to the date of the approval of the Final Resolution Plan by the NCLT, the invoked amount will be added to fund based debt extended by the issuing bank and will be serviced on the same bank and terms along with the restructured repayment schedule of that fund-based debt as set out in paragraph C of this Section VI. It is clarified that NPV of the invoked BG amount to be added will be in addition to the NPV of overall amount of INR 3674 crores payable to the Secured Financial Creditor.

(*b*) If the BG/LC was issued after the date of the approval of the Final Resolution Plan by the NCLT, the amount of such invocation will be payable by the Company on demand, as per the terms of the BG/LC."

4. Further at the time of hearing on 6-12-2021, Counsel of Applicants was present who submitted that the Applicants in all the above three Applications have prayed for higher share from the Resolution Applicant as part of the Resolution Plan than the share allocated in the Resolution Plan duly approved. She has drawn our attention to section 30 (2)(*b*) of the Code and same was narrated at pg 19 of IA 2025 and submitted that she is entitled to get higher amount.

5. We have heard the learned Counsel for the Applicants and Respondent and have perused the pleadings and documents attached thereto. The section 30(2)(*b*) of the Code reads :

"30. Submission of resolution plan. —

(1) ** ** **

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan —

(*a*) ** ** **

(*b*) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(*i*) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(*ii*) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board,

which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(*i*) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(*ii*) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(*iii*) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;)...."

6. On perusal of the relevant provisions and after hearing the Respondent, we observed that section 30(2)(*b*) of the Code provides for the payment of debts of the Dissenting FCs in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with section 53(1) of the Code in the event of liquidation. *Explanation 1* to section 30(2)(*b*) of the Code further clarifies that distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

7. It is pertinent to note that the invocation of BG is as per the terms of Resolution Plan. Thus, any increase in the claim amount of the Assenting FCs due to the invocation of such BG cannot be a ground for challenge by the Dissenting FCs on grounds of discrimination. Further, the decision to include the invoked amount of the BG to the fund-based debts is a commercial decision of the CoC.

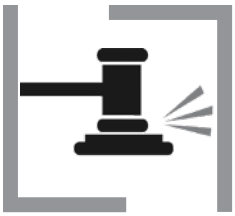
8. Further, Resolution Plan once approved by the AA shall stand frozen and binding on all stakeholders including FCs. The Hon'ble Supreme Court in the matter of *Ghanashyam Mishra & Sons. (P.) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* (2021) 126 taxmann.com 132/166 SCL 237 (SC) in para 95(*i*) at pg. 103 held "That once a Resolution Plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the Resolution Plan shall stand frozen and will be binding on the Corporate Debtor, and its employees, members, creditors,

including the Central Government any State Government or any local authority, guarantors and other stakeholders."

9. It is noted that the BG invocation and the revision in the amounts of Assenting FCs is as per the terms of the Resolution Plan. Similarly, in the case of *Ghanashyam Mishra & Sons.* (*P.*) *Ltd.* (*supra*) it is laid down that Resolution Plan once approved by the AA shall stand frozen and shall be binding on all stakeholders including FCs. In view of this, the prayers are liable to be rejected. Hence ordered.

ORDER

IAs 2025, 2028 and 2035 of 2021 are rejected and dismissed.



(2022) 135 taxmann.com 111 (NCLAT - New Delhi)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Rajasthan State Road Development & Construction Corporation Ltd. *v.* Vasundhra Gupta

JARAT KUMAR JAIN, JUDICIAL MEMBER

AND DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

COMPANY APPEAL(AT) (INS) NO. 131 OF 2021†

DECEMBER 6, 2021

Section 60 of the Insolvency and Bankruptcy Code, 2016 - Corporate person's Adjudicating Authorities - Adjudicating Authority - Whether residuary jurisdiction of Adjudicating Authority cannot be invoked if termination of a contract is based on grounds unrelated to Insolvency of corporate debtor - Held, yes - Appellant-Corporation awarded work order to corporate debtor for construction of a building - Before initiation of CIRP, several extensions were granted to corporate debtor for completion of work, however, corporate debtor was not able to complete work - Thus, Corporation issued order for cancellation/termination of said work order - There was nothing on record to indicate that termination of work order was motivated by insolvency of corporate debtor - Corporation had issued notice of termination to corporate debtor in exercise of power given in clauses 59 and 60 of said work order - Whether therefore, NCLT did not have any residuary jurisdiction to entertain present contractual dispute which had arisen de hors insolvency of corporate debtor and, thus, in absence of jurisdiction over dispute, NCLT could not have imposed stay on operation of termination order - Held, yes (Para 35)

FACTS

- The work order was awarded to the corporate debtor by the Appellant-Corporation for construction of building for State of Art Capacity Building and Training Centre and Help Desk Commercial Tax Department. There were several extensions granted to the corporate debtor for completion of work. Even in the extended period of almost two years the corporate debtor was not able to complete the work. Therefore, the work order was terminated as per clauses 59 and 60 of the SDB agreement and bank guarantee was enchased.
- Meanwhile CIRP was initiated against corporate debtor. Suspended Director of the corporate Debtor filed on application under section 60(5) before the Adjudicating Authority for stay on the operation of the termination order and to maintain *status quo*. According to corporate debtor, period was extended to complete the work upto 30-6-2020 by corporation, however, in violation of its own extension order, corporation have terminated the contract before the extended period which was illegal.

- Adjudicating Authority vide impugned order directed that since, CIRP was initiated against corporate debtor provisions for termination included in or connected with instruments of work order, were inconsistent inter alia with section 20 and was invalid and prohibited under section 238. Moreover, termination proceedings could not be initiated or continued under bar of moratorium of section 14.

HELD

- In the Government order extension is granted to discharge the obligation under the contract to those awardees of contracts who are not in default for their obligation prior to 19-2-2020, whereas, the Corporate Debtor is defaulter prior to 19-2-2020. Therefore, the Corporate Debtor is not entitled to get the advantage of aforesaid Government order. Thus, to termination of Work Order not in violation of Government order.

- Admittedly, the Appellant-Corporation is neither supplying any 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). This is not a case in which IRP/RP considers that the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and managed the operations of such Corporate Debtor as a going concern, then supply of such goods or services shall not be terminated. In the present case, the appellant-Corporation was availing the services of the corporate debtor for construction of building. Thus, section 14 is indeed not applicable to the present case. (Para 28)

- But when the dispute arises *de hors* the Insolvency of the Corporate Debtor, the RP must approach the relevant competent authority. Whether there is a nexus between the termination notice and the Insolvency Resolution Proceeding for this we have to examine the terms of the termination notice. The residuary jurisdiction of Adjudicating Authority cannot be invoked if termination of a contract is based on grounds unrelated to Insolvency of Corporate Debtor. (Para 30)

- Further, termination notice for work order clearly lays down the defaults committed by the corporate debtor in completion of work. In this matter, there is no nexus of work orders with the insolvency of the corporate debtor. There is nothing to indicate that the termination of work orders was motivated of the insolvency of the corporate debtor. The Appellant had time and again informed the corporate debtor that they committed default in completing the construction and therefore, as per clauses 59, 60 & 61 of the agreement the appellant is entitled to terminate the work orders. The trajectory of events makes it clear that the alleged breaches noted in the termination notice were not a smokescreen to terminate the agreement because of the insolvency of the corporate

debtor. Thus, we are of the view that the Adjudicating Authority does not have any residuary jurisdiction to entertain the present contractual dispute which has been arisen *de hors* the insolvency of the corporate debtor. In the absence of jurisdiction over the dispute, the Adjudicating Authority could not have held that the termination of work orders are inconsistent with section 20 are in valid and prohibited under section 238. Moreover, section 14 is not applicable to the present case. (Para 31)

- In the present case, there is no factual analysis on how the termination of work orders would put survival of the Corporate Debtor in jeopardize. Thus, the termination of work orders are not in violation of Government order and sections 14 and 238. Hence, the Adjudicating Authority does not have any residuary jurisdiction under section 60(5)(c) to entertain the contractual dispute between the Appellant-Corporation and the corporate debtor. (Para 33)

- With the aforesaid, in the present facts, the Adjudicating Authority cannot exercise the jurisdiction under section 60(5)(c) in relation to contractual dispute between the appellant-Corporation and the corporate debtor. Accordingly, the Judgment of Adjudicating Authority is set aside. (Para 35)

CASE REVIEW

Vasundhra Gupta v. *Rajasthan State Road Development & Construction Corpn. Ltd.* (2022) 135 taxmann.com 110 (NCLT - Jaipur) (para 35) *reversed* (***See annex***).

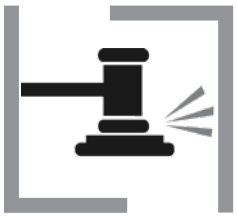
CASES REFERRED TO

Monnet Ispat & Energy Ltd. v. *Government of India, Ministry of Coal* (2019) 101 taxmann.com 418/154 SCL 128 (NCLAT - New Delhi) (para 7), *Gail (India) Ltd.* v. *Rajeev Manaadiar* (CA (AT) (Ins.) No. 319 of 2018, dated 24-7-2018) (para 9), *State of Punjab* v. *Devinder Pal Singh Bhullar* AIR 2012 SC 364 (para 13), *Astonfield Solar (Gujarat) (P.) Ltd.* v. *Gujarat Urja Vikas Nigam Ltd.* (CA-700/ND/2019) (para 24), *Gujarat Urja Vikas Nigam Ltd.* v. *Amit Gupta* (2021) 125 taxmann.com 149 (NCLAT - New Delhi) (para 24), *Gujarat Urja Vikas Ltd.* v. *Amit Gupta* (2021) 125 taxmann.com 150/167 SCL 241 (SC) (para 25) and *Tata Consultancy Services Ltd.* v. *Vishal Ghisulal Jain, RP SK Wheels (P.) Ltd.* (2021) 132 taxmann.com 232 (SC) (para 25).

Dr. Rajeev Sharma, Adv. *for the Appellant.* **Jasmeet Singh**, **Divjot Singh Bhatia**, **Pushpendra Singh Bhadoriya**, **Rusheet Salya**, **Ms. Aastha Chaturvedi**, **Ankit Raj** and **Piyush Beriwal**, Advs. *for the Respondent.*

† Arising out of order of NCLT Jaipur in *Vasundhra Gupta* v. *Rajasthan State Road Development & Construction Corpn. Ltd.* (2022) 135 taxmann.com 110.

FOR FULL TEXT OF THE JUDGMENT SEE
(2022) 135 taxmann.com 111 (NCLAT- New Delhi)



(2022) 135 taxmann.com 105 (NCLAT- New Delhi)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Apya Capital Services (P.) Ltd. *v.* Guardian Homes (P.) Ltd.

ANANT BIJAY SINGH, JUDICIAL MEMBER

AND MS. SHREESHA MERLA, TECHNICAL MEMBER

I.A. NO. 2068 OF 2021†

COMPANY APPEAL (AT) (INSOLVENCY) NO. 412 OF 2020

DECEMBER 9, 2021

Section 61, read with sections 7 and 9, of the Insolvency and Bankruptcy Code, 2016 and section 424 of the Companies Act, 2013, read with rule 11 of National Company Law Appellate Tribunal Rules, 2016 - Corporate persons adjudicating authorities - Appeals and Appellate Authority - Appellate Tribunal had passed an order dated 8-12-2020, admitting application of appellant under section 7 - Applicant submitted that Appellate Tribunal had committed an ex-facie error apparent on fact of record since it had treated applicant as a 'financial creditor' under IBC and application preferred by it before NCLT, as one filed under section 7 of IBC when it was apparent from record and also an admitted case of applicant that he was an 'operational creditor' and had preferred application under section 9 - Accordingly, said judgment of Appellate Tribunal was challenged before Supreme Court, and, Supreme Court dismissed appeal filed by applicant - Thereafter, applicant filed fresh application before instant Appellate Tribunal with a prayer to recall judgment and order dated 8-12-2020 passed by Appellate Tribunal - Whether neither section 424 of Companies Act, 2013, nor rule 11 of NCLAT Rules, 2016 grants power to NCLAT to recall an order passed by it after said order has been challenged before Supreme Court, same being dismissed - Held, yes - Whether power to recall judgment is not permitted in IBC - Held, yes Whether therefore, application filed by applicant was to be dismissed as not maintainable - Held, yes (Paras 13 and 15)

CASES REFERRED TO

Guardian Homes (P.) Ltd. v. *Apya Capital Services (P.) Ltd.* (Civil Appeal No. 1813 of 2021, dated 1-7-2021) (para 12).

Abhishek Kumar Srivastava, **Aditya Sharma**, Advs., **Ms. Priya Hingorani**, Sr. Adv. and **Himanshu Yadav**, Adv. *for the Appearing Parties.*

ORDER

Anant Bijay Singh, Judicial Member. - The instant Application bearing I.A. No. 2068 of 2021 has been filed on behalf of the Respondent/Applicant under section 424(1) of the Companies Act, 2013, as amended, read with Rule 11 of the National Company

Law Appellate Tribunal Rules, 2016 with a prayer to recall of the judgment and order dated 8-12-2020 passed by this Appellate Tribunal. The relevant authoritative portion of the final judgment and order dated 8-12-2020 is reproduced below:

> "9. For the reasons recorded hereinabove, we allow the appeal and *set aside* the impugned order. The Adjudicating Authority is directed to admit the application of Appellant under section 7 of the 'I&B Code' after providing an opportunity to the Respondent - Corporate debtor to settle the claim of Appellant, if it so chooses and pass all consequential directions as a sequel thereto. There shall be no order as to costs."

2. The Learned Sr. Counsel for the Respondent/Applicant submitted that the relevant extracts from the impugned Judgment clearly depicting the said *ex-facie* errors are extracted below:

> "6. .....it is futile on the part of the Corporate Debtor to raise the grievance that there was a dispute relating to the quality of service. As already noticed no suit or arbitration proceedings were pending *on the date of filing of application under section 7* in regard to quality of service to bring the same within the ambit of dispute as contemplated under section 5(6)(*b*) of the 'I&B Code' to disentitle the Appellant- Financial Creditor from initiating Corporate Insolvency Resolution Process. No such dispute was even brought to the notice of the *Appellant-Financial Creditor* as the demand notice served under section 8(1)of the 'I&B Code' was not responded to by the Corporate Debtor. Therefore, we have no hesitation in holding that the *Appellant- Financial Creditor* was entitled to raise the invoice dated 20-4-2019 in regard to the unpaid balance amount of Rs. 2,05,00,000/- in respect whereof default was committed by the Corporate Debtor who admittedly paid only Rs. 75 Lakhs as part payment.

8. In view of the foregoing discussion on merits of the case, we are of the considered opinion that the Adjudicating Authority has landed in error in holding that there was no 'debt' as claimed by the Appellant and there was 'deficiency in service' provided by the Appellant. The findings recorded by the Adjudicating Authority are grossly erroneous and same cannot be supported. Once the liability in respect of Rs. 75 lakh was admitted and the same was not discharged by the Corporate Debtor, *dispute in regard to quantum of debt would be immaterial at the stage of admission of application under section 7 unless the debt due and payable falls below the minimum threshold limit prescribed under law*. The impugned order is liable to be *set aside* as the same is unsustainable.

9. For the reasons recorded hereinabove, we allow the appeal and *set aside* the impugned order. *The Adjudicating Authority is directed to admit the application of Appellant under section 7 of the 'I&B Code' after providing an opportunity to the*

Respondent- Corporate Debtor to settle the claim of Appellant, if it so chooses and pass all consequential directions as a sequel thereto. There shall be no order as to costs."

3. The instant Application has been filed by the Respondent/Applicant with following prayers:

"(*a*) recall the Order dated 18-12-2020 passed in Company Appel (AT) (Insolvency) No. 412 of 2020 titled '*Apya Capital Services Pvt. Ltd.* v. *Guardian Homes Pvt. Ltd.*';

(*b*) direct the Hon'ble National Company Law Tribunal, Mumbai to *de novo* consider the section 9 IBC Application of the Appellant/Operational Creditor, bearing C.P. No. 3113/I&B/2019;

(*c*) grant *ad-interim* stay over the execution of the Order dated 8-12-2020 passed in Company Appeal (AT) (Insolvency) No. 412 of 2020 '*Apya Capital Services Pvt. Ltd.* v. *Guardian Homes Pvt. Ltd.*' till the pendency of the present Application;

(*d*) pass such other/further Order(s) as deemed fit and proper in the interest of justice."

4. *Vide* minutes of the Hon'ble Chairperson dated 22-11-2021, the matter was directed to be listed before this Bench comprising Hon'ble Mr. Justice Anant Bijay Singh, Member (Judicial) and Hon'ble Ms. Shreesha Merla, Member (Technical) and the matter was heard.

5. The Learned Counsel for the Respondent/Applicant submitted that this Hon'ble Appellate Tribunal, *vide* Order dated 8-12-2020, has committed an *ex-facie* error apparent on the fact of record since it has treated the Appellant as a 'Financial Creditor' under IBC and the Application preferred by it before the Hon'ble NCLT, Mumbai as the one filed under section 7 of IBC when it is apparent from the record and also an admitted case of the Appellant that he is an 'Operational Creditor' and had preferred the Application under section 9 of IBC.

6. It is further submitted that this Hon'ble Appellate Tribunal has accordingly erred to hold that dispute in regard to quantum of debt would be immaterial at the stage of admission of the said application unless the debt due and payable falls below the minimum threshold limit prescribed under law.

7. It is further submitted that this Hon'ble Appellate Tribunal has erred in holding in Para 8 of the Order dated 8-12-2020 that the pre-existing dispute between the Appellant an admitted (Operational Creditor) and the Respondent/Corporate Debtor in regard to quantum of debt would be immaterial at the stage of admission of the Application of the Appellant (admittedly filed under section 9 of IBC). The said observation is completely in teeth with the provisions of sections 8, 9 and 5(6)(*a*) of IBC and also completely contrary to the record of the case.

8. It is further submitted that the section 424 (1) of the Companies Act, 2013 empowers this Hon'ble Appellate Tribunal to be guided by the principle of natural justice, subject

to the other provisions of the Companies Act, or IBC to regulate its own procedure. The provisions of section 424(1) of the companies Act, 2013 as hereunder:

> "The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act (or of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)) and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure."

9. It is further submitted that rule 11 of the NCLAT Rules, 2016 vests inherent powers on this Hon'ble Appellate Tribunal to make such orders or give directions as may be necessary for meeting the ends of justice. The rule 11 of the NCLAT Rules, 2016 as hereunder:

> "11. Inherent powers.- Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal."

10. From the perusal of the record it appears that earlier the Appellant has filed the I.A. No. 3012 of 2020 (I.A. No. 1154 of 2020) in Company Appeal (AT) (Insolvency) No. 412 of 2020, this Appellate Tribunal has passed the following orders:

> "……. Learned Counsel for the Appellant submits that Learned Counsel for the Respondent has moved before the Hon'ble Supreme Court of India in Civil Appeal No. 1813 of 2021 in the matter of *'Guardian Homes Pvt. Ltd.* v. *Apya Capital Services Pvt. Ltd.'*.

The Hon'ble Supreme Court of India Order dated 1-7-2021 has passed the following order:-

> "We have heard the learned senior counsel for the appellant and perused the record. We do not see any cogent reason to entertain the appeal. The Judgment impugned does not warrant any interference.
>
> The appeal is accordingly dismissed."
>
> The Appeal stand dismissed and the findings of the Judgment was confirmed. Appeal was dismissed and does not want to press the Interlocutory Application. Accordingly, I.A. No. 3012 of 2020 filed on 17-12-2020 and I.A. No. 1154 of 2021 stand dismissed and not pressed."

11. Thereafter, the Learned Sr. Counsel for the Respondent/Applicant has filed the fresh Application *i.e.* I.A. No. 2068 of 2021 before this Appellate Tribunal.

12. After hearing the Learned Counsel for the Respondent/Applicant and provisions of law including section 424(1) of the Companies Act, 2013 and also rule 11 of NCLAT Rules, 2016, we are of the considered view that the aforesaid judgment of this Appellate Tribunal passed in Company Appeal (AT) (Insolvency) No. 412 of 2020, dated 8-12-2020 has been challenged before the Hon'ble Supreme Court in Civil

Appeal No. 1813 of 2021 *Guardian Homes (P.) Ltd.* v. *Apya Capital Services (P.) Ltd.* (Civil Appeal No. 1813 of 2021, date 1-7-2021) and the Hon'ble Supreme Court *vide* order dated 1-7-2021 dismissed the Appeal filed by the Respondent/Applicant. Therefore, the judgment passed by this Appellate Tribunal merged with the order passed by the Hon'ble Supreme Court.

13. We have also of the considered view that neither section 242(1) of the Companies Act, 2013 nor rule 11 of the NCLAT Rules, 2016 gives power to this Appellate Tribunal to recall the judgment passed by this Appellate Tribunal, after the judgment dated 8-12-2020 was questioned before the Hon'ble supreme Court in Appeal and the Appeal was dismissed by the Hon'ble Supreme Court.

14. This Appellate Tribunal also takes note of the fact that the order dated 2-9-2021 passed in I.A. No. 3012 of 2020 and I.A. No. 1154 of 2020 in Company Appeal (AT) (Insolvency) No. 412 of 2020 shows that the said I.As. have already been dismissed and not pressed.

15. Taking all these facts and circumstances, we are of the considered view that power to recall the judgment is not permitted in IBC. Accordingly, the I.A. No. 2068 of 2021 filed by the Respondent/Applicant is hereby dismissed as not maintainable.

† Arising Out of order of NCLAT New Delhi in *Apya Capital Services (P.) Ltd.* v. *Guardian Homes (P.) Ltd.* (2021) 129 taxmann.com 393.

Disciplinary Mechanism of Insolvency Professional Agencies

BACKGROUND

An Insolvency Professional is the most important component of Insolvency and Bankruptcy Code who has been entrusted with a wide range of functions so as to effectively strive to maximise the value of assets of debtor during the resolution process. Be it Corporate Insolvency Resolution Process (CIRP) or Liquidation, both the process are largely executed through Insolvency Professionals. He is the fulcrum of the process and link between the Adjudicating Authorities (AA) and Committee of Creditors (CoC) as also other stakeholders.

The role of Insolvency Professional under the Insolvency and Bankruptcy Code is crucial and critical to fulfil the objective of the Code. It is imperative that the Insolvency Professional functions and discharges his/her duties independently in a fair and transparent manner and facilitate fulfilment of the objectives of the Code. The deviant behaviour of Insolvency Professional shall derail the entire resolution process. Such an important Professional cannot be left unregulated, therefore it is necessary to have an objective, credible mechanism which does not spare any misconduct, while it does not penalize an honest conduct of an Insolvency Professional.

DISCIPLINARY MECHANISM

The IBC consists of four pillers *viz.*,

- the Adjudicating Authorities (the National Company Law Tribunals and Debts Recovery Tribunals),
- Insolvency Professionals (IPs) and Information Utilities (IUs),
- Insolvency Professional Agencies (IPAs) and
- Insolvency and Bankruptcy Board of India (IBBI).

The IBBI exercises regulatory oversight over IPAs, IPs and IU. IPAs also regulate IPs. **Therefore, the IBC provides for a two-tier regulatory regime for the IPs, the IBBI and the IPAs which are regulated by the IBBI.** In this article we shall discuss disciplinary mechanism of IPAs.

DISCIPLINARY MECHANISM OF INSOLVENCY PROFESSIONAL AGENCIES

The three IPAs registered with IBBI namely Indian Institute of Insolvency Professionals of ICAI (IIIP ICAI), ICSI Institute of Insolvency Professionals (ICSI IIP) and Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICMAI) are entrusted with the power and authority *inter alia* to enrol, educate, monitor, and **discipline the Insolvency Professionals enrolled with them**.

The Disciplinary Mechanism of IPAs is governed by the Bye Laws (consistent with the Model Bye Laws contained in the schedule to IBBI (Model Bye Laws and Governing Board of IPA) Regulations, 2016) and Disciplinary Policy adopted by them.

Grievance against Insolvency Professional	◆ Any person who has engaged the services of the IP or any other person as may be provided by the Governing Board of the IPA may file grievance with the IPA with which the IP is enrolled.
Grievance Redressal Committee	◆ The Grievance Redressal Committee, after examining the grievance may- (*a*) dismiss the grievance if it is devoid of merit; or (*b*) initiate a mediation between parties for redressal of grievance (*c*) refer the matter to the Disciplinary Committee, where the grievance warrants disciplinary action.
Disciplinary Proceedings	◆ The Agency may initiate disciplinary proceedings by issuing a show-cause notice against professional members- (*a*) based on a reference made by the Grievances Redressal Committee; (*b*) based on monitoring of professional members; (*c*) following the directions given by the IBBI or any court of law; or (*d*) suo moto, based on any information received by it.

Adherence to Principal of Audi Alteratum Partem	◆ The discretion given to Disciplinary Committee is wide, however any decision is taken by the Committee after giving opportunity to the IP to present his case.
Disciplinary Action	◆ The orders that may be passed by the Disciplinary Committee shall include- ◆ expulsion of EP; ◆ suspension of the IP or a certain period of time; ◆ cancellation of authorisation for assignment; ◆ admonishment of the IP; ◆ imposition of monetary penalty; ◆ reference of the matter to the IBBI; ◆ directions relating to costs.
Appeal before Appellate Panel	◆ Any person aggrieved of an order of the Disciplinary Committee may prefer an appeal before the Appellate Panel within thirty days from the receipt of a copy of the final order.

Benchmark for penalties to be raised by the Insolvency Professional Agencies

Previously, the IPAs were free to discipline their members by imposing discretionary penalties decided by each agency. However, IBBI *vide* its circular dated 28th July, 2021, provided benchmark for penalties so that individual IPAs impose penalties in a uniform manner.

Pursuant to the circular, the penalty is up to ₹1 lakh or 25% of the fee charged by the professional, whichever is higher in cases of failure in making proper disclosures to the insolvency professional agency. The minimum penalty, in this case, is ₹50,000. In cases where the professional accepts assignments that involve a conflict of interest with other stakeholders, the penalty is up to ₹2 lakh or 25% of the fee charged, whichever is higher. In this case, the minimum penalty is ₹1 lakh. Penalties for various other contraventions are also provided in the IBBI circular.

Common violations observed by the Disciplinary Committee of Insolvency Professional Agencies

The Disciplinary Committees of Insolvency Professional Agencies passed various orders since the inception of the Insolvency and Bankruptcy Code. These orders are reasoned and contain detailed contraventions against IP, submissions made by IP, legal provisions as well as analysis and findings of the Disciplinary Committee. Following are some common violations observed by the Disciplinary Committees of IPAs:

- Acceptance of assignment without getting renewal of authorisation for assignment (AFA).
- Delay in statutory timelines.
- Misrepresentation of facts in the minutes of meetings of committee of creditors.

- Improver e-voting procedure (approval of Financial Creditors were taken on e-mails).
- Non filing of proper forms/disclosures to IPA.
- Non appointment if registered valuers.
- Appointment of related party for work related to assignment.
- Non-obtaining of declaration of confidentiality from CoC members while sharing Information Memorandum and fair and liquidation value of the corporate debtor.

CONCLUSION

On perusal of various orders passed by the Insolvency Professional Agencies (published on the website of IPAs), it has been observed that low impact & in deliberate violations of law are generally excused by merely imposing minimum penalty, issuing advisory, reprimand etc. However, in case of major violations serious actions are taken against Insolvency Professionals.

It is clearly evident that IBBI and IPAs emphasize on 'Self Discipline'. Every function which an IP is required to perform as per IBC requires highest level of professional competence including financial engineering and value maximization management. Therefore, an IP is expected to comply with the provisions of the law and ensure utmost integrity, objectivity, independence and impartiality.

FAQs on filing of CIRP forms

1. What are the different CIRP forms which are required to be filed by the Insolvency Professional while handling a CIRP process?

As per Regulation 40B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with IBBI circular dated 14th August, 2019, 18th March, 2021 & 20th July, 2021, following forms are required to be filed by IRP/RP (*as the case may be*):

Form No.	Particulars	To be filed by	Timelines
IP-1	**Pre-Assignment:** This includes consent to accept assignment IP as IRP/RP/ Liquidator/Bankruptcy Trustee and details thereof.	IP	Within 3 days of giving consent
CIRP -1	**From Commencement of CIRP till Issue of Public Announcement:** Details of IRP, CD, public announcement, AR etc.	IRP	Within 7 days of making Public Announcement
CIRP- 2	**From Public Announcement till replacement of IRP:** Details of claims, CoC, cost incurred, disclosures filed etc.	IRP	Within 7 days of replacement of IRP.
CIRP-3	**From Appointment of RP till issue of Information Memorandum (IM) to Members of CoC:** details of RP, details of registered valuers, handing over of records of CD by IRP to RP, details in IM etc.	RP	Within 7 days of issue of IM to members of CoC.
CIRP-4	**From Issue of IM till issue of Request for Resolution Plans (RFRP):** Details of RFRP, evaluation matrix etc.	RP	RP Within seven days of the issue of RFRP.

Form No.	Particulars	To be filed by	Timelines
CIRP-5	**From Issue of RFRP till completion of CIRP: Details of claimants, resolution plan, liquidation, CIRP cost etc.**	RP	Within 7 days from the approval/ rejection of resolution plan or order of liquidation
CIRP-6	**IRP 6 Event Specific: This includes:** ***a.*** Filing of application in respect of preferential transaction, undervalued transaction, fraudulent transaction, and extortionate transaction; ***b.*** Raising interim finance; ***c.*** Insolvency resolution process of guarantors; ***d.*** Extension of period of CIRP and exclusion of time; ***e.*** Premature closure of CIRP (appeal, settlement, withdrawal, *set aside* etc.); ***f.*** Request for liquidation before completion of CIRP; and ***g.*** Non implementation of resolution plan as approved by the AA.	IRP or RP, as the case may be	Within seven days of the occurrence of event.
CIRP-7	**Where any activity stated above is not complete by the date specified therein, the interim resolution professional or resolution professional, as the case may be, shall file Form CIRP-7 within three days of the said date, and continue to file Form CIRP-7, every 30 days, until the said activity remains incomplete-** - Public announcement is not made by T+3rd day - Appointment of RP is not made by T+30th day - Information memorandum is not issued within 51 days from the date of public announcement - RFRP is not issued within 51 days from the date of issue of information memorandum	IRP or RP as the case may be	Date specified in above + 3 days X+30th day, X+60th day, X+90th day, and so on, till the activity is completed.

Form No.	Particulars	To be filed by	Timelines
	- CIRP is not completed by T+180th day		
CIRP-8	The resolution professional to **form an opinion** on transactions covered under sections 43, 45, 50 and 66 by **75th day**, make **determination** on such transactions by **115th day**, and **file an application** before the Adjudicating Authority by **135th day** of the insolvency commencement date. Sub-regulation (1B) of regulation 40B of the CIRP Regulations requires the resolution professional to **file Form CIRP-8** intimating details of his opinion and determination under Regulation 35A, by **140th day** of the insolvency commencement date. The Form CIRP 8 is required to be filed for all corporate insolvency resolution processes ongoing or commencing on or after 14th July 2021.	RP	X+140th day

Forms CIRP-3 to CIRP-5 are required to be filed by IRP also, in cases where he/she is working as deemed RP.

2. How the CIRP forms will be filed on IBBI website?

The assignment needs to be added at online portal of IBBI along with copy of admission order. Post approval of the same from admin IBBI, the CIRP forms (CIRP-1,2, 6 and 7) will be open for filing for an IRP.

For filing of forms as Resolution professional, again the assignment needs to be added with required documents, post approval of the same from admin IBBI, the CIRP forms (CIRP-3,4,5,6,7 & 8) will be open for filing.

If the IRP is handling the case as deemed RP in accordance with Section 22 of the Code, the IRP will add the assignment as deemed RP along with copy of minutes of CoC/AA order etc., Post approval of the same from admin IBBI, the CIRP forms (CIRP-3,4,5,6,7 & 8) will be open for filing.

3. Whether CIRP-5 is also required to be filed in the matters where liquidation order has been passed by AA?

As per Regulation 40B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, CIRP-5 is required to be filed:

- Within seven days of the approval or rejection of the resolution plan under section 31.

- issue of liquidation order under section 33, as the case may be, by the AA.

Therefore, Form CIRP-5 is required to be filed in cases where liquidation order is passed by AA. The Insolvency Professionals are required to mention the date of liquidation in the starting of the form and fill the details, wherever applicable.

4. Whether CIRP-7 is required to be filed in cases where application for liquidation is approved by CoC but pending with Adjudicating Authority?

One of the scenarios for filing of Form CIRP-7 is when the CIRP is not completed by T+180th day. Accordingly, Form is required to be filed in all cases where the case is ongoing irrespective of the fact whether the same is pending with CoC, Adjudicating Authority, extension application filed with AA, extension allowed by AA etc.

If the case is ongoing, Form CIRP-7 is required to be filed and it is to be filed after every 30 days till the activity is completed.

5. Whether CIRP-8 is required to be filed in cases where no opinion on PUFE transactions has been made by the Insolvency Professional?

As per Regulation 40B & IBBI circular dated 20th July, 2021, the resolution professional shall file Form CIRP-8 intimating details of his opinion and determination under Regulation 35A, on or before the 140th of the insolvency commencement date. Accordingly, details of opinion and determination (whether made/not) shall be filed in Form CIRP-8.

6. Whether any the delay filing or modification fees on CIRP forms is levied by IBBI?

Yes, the filing of forms after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st October, 2020.

The insolvency professional or interim resolution professional or resolution professional, as the case may be, shall be liable to any action which the Board may take as deemed fit under the Code or any regulation made thereunder, including refusal to issue or renew Authorisation for Assignment, for-

(*i*) failure to file a form along with requisite information and records;

(*ii*) inaccurate or incomplete information or records filed in or along with a form;

(*iii*) delay in filing the form.

However, if the delay has been caused due to the technical glitches on IBBI portal and proper communication has been made to IBBI in this regard, the delay filing fees paid by the IP may be refunded by IBBI on special request made with the proofs.

Regulatory updates - December 2021

- IBBI on 1st December 2021 issued *Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2021*

  (**Guidelines can be accessed at https://ibbi.gov.in//uploads/legalframwork/f812a9b138081ae0760bc224a478fdc4.pdf**)

- IBBI notified amendment to the *IBBI (Online delivery of educational course and continuing professional education by IPAs and registered valuers organisations) Guidelines, 2020*.

  (**Amended Guidelines can be accessed at https://ibbi.gov.in//uploads/legalframwork/ 58782cc53126e4e8cfc18103d7d5798d.pdf**)

Intermediaries Under UK Insolvency Law W.R.T. Individual Insolvencies

Role of the Secretary of State:

The Secretary of State for Small Business, Consumers and Corporate Responsibility is in charge of handling the Insolvency Service. This organization administers and investigates the affairs of bankrupts and companies in compulsory liquidations and reports criminal offences; takes disqualification proceedings against unfit directors of failed companies; authorizes and regulates insolvency practitioners; provides banking and investment services for bankruptcies and company liquidations; and provides policy advice to ministers.

This role is synonymous to the role of the regulatory body (Insolvency and Bankruptcy Board of India) in India.

Rule 5 of the England and Wales Insolvency Rules 2016 specifies the power of the Secretary of State during ongoing individual insolvency proceedings.

Rule 5(2) states the role they play in Individual Insolvency:

"The regulations that may be made may include, without prejudice to the generality of paragraph (1), provision with respect to the following matters arising in companies winding up and individual bankruptcy:

(a) *the preparation and keeping by liquidators, trustees, provisional liquidators, interim receivers and the official receiver, of books, accounts and other records, and their production to such persons as may be authorized or required to inspect them;*

(b) *the auditing of liquidators' and trustees' accounts;*

(c) *the manner in which liquidators and trustees are to act in relation to the insolvent company's or bankrupt's books, papers and other records, and the manner of their disposal by the responsible office-holder or others;*

(d) *the supply of copies of documents relating to the insolvency and the affairs of the insolvent company or individual (on payment, in such cases as may be specified by the regulations, of the specified fee)—*

(i) *by the liquidator in company insolvency to creditors and members of the company, contributories in its winding up and the liquidation committee; and*

(e) *by the trustee in bankruptcy to creditors and the creditors' committee; the manner in which insolvent estates are to be distributed by liquidators and trustees, including provision with respect to unclaimed funds and dividends;*

(f) *the manner in which moneys coming into the hands of a liquidator or trustee in the course of the administration of the proceedings are to be handled and invested, and the payment of interest on sums which have been paid into the Insolvency Services Account under regulations made by virtue of this sub-paragraph;*

(g) *the amount (or the manner of determining the amount) to be paid to the official receiver as remuneration when acting as provisional liquidator, liquidator, interim receiver or trustee."*

The Secretary of State as per 251W of the Insolvency Act 1986 states that they must also maintain the register for Debt Relief Orders.

Rule 8.26 of the England and Wales Insolvency Rules, 2016 states the role of the Secretary of State in the Individual Voluntary Arrangement (IVA) process:

1. After the creditors approve an IVA the nominee, appointed person or the chair must deliver a report containing the required information to the Secretary of State.

2. The report must be delivered as soon as reasonably practicable, and in any event within 14 days after the report that the creditors have approved the IVA has been filed with the court under rule 8.24(3) or the notice that the creditors have approved the IVA has been sent to the creditors under rule 8.24(5) as the case may be.

3. The required information is—

   (*a*) identification details for the debtor;

   (*b*) the debtor's gender;

   (*c*) the debtor's date of birth;

   (*d*) any name by which the debtor was or is known, not being the name in which the debtor has entered into the IVA;

   (*e*) the date on which the IVA was approved by the creditors; and

   (*f*) the name and address of the supervisor.

4. A person who is appointed to act as a supervisor as a replacement of another person, or who vacates that office must deliver a notice of that fact to the Secretary of State as soon as reasonably practicable."

Role of the Insolvency Service:

It is an executive agency of the Department for Business, Energy and Industrial Strategy, having headquarters in London. It has around 1,700 staff operating from 22 locations across UK.

Roles played by the Insolvency Service are:

- Administration of bankruptcies and debt relief orders;
- Looking into the affairs of companies in liquidation, making reports of any director misconduct;
- Investigating trading companies and take action to wind them up and/or disqualify the directors if there is evidence of misconduct;
- Acting as trustee/liquidator where no private sector insolvency practitioner is in place;
- Issue redundancy payments from the National Insurance Fund;
- Working to disqualify unfit directors in all corporate failures;
- Dealing with bankruptcy and debt relief restrictions orders and undertakings;
- Acting as a impartial source of information for the public on insolvency and redundancy matters;
- Advising Business, Energy and Industrial Strategy (BEIS) ministers and other government departments and agencies on insolvency and redundancy related issues;
- Investigating and prosecuting breaches of company and insolvency legislation and other criminal offences on behalf of BEIS

Role of Recognised Professional Bodies (RPBs):

Following are the list of RPBs existing in UK who deals in the field of Insolvency:

1. Institute of Chartered Accountants of England and Wales
2. Institute of Chartered Accountants in Scotland
3. Institute of Chartered Accountants in Ireland
4. Association of Chartered Certified Accountants
5. Law Society of England and Wales
6. Law Society of Scotland
7. Law Society of Northern Ireland
8. Insolvency Practitioners Association

Roles of RPBs:

- Register the Insolvency Practitioner, educate and regulate them.(This role is pretty much like those of Insolvency Professional Agencies in India);
- Assisting the Joint Insolvency Examination Board in conducting the Joint Insolvency Exams;
- Drafting of Statement of Insolvency Practice (SIP);
- As a member of The Joint Insolvency Committee (JIC), the RPBs help to develop, improve and maintain insolvency standards from a regulatory, ethical and best practice perspective.
- Issuance of Insolvency Guidance Papers;
- Conducting examinations leading to the issue of the Certificate of Proficiency in Insolvency (CPI);
- RPBs issue Technical Bulletins which contains technical reminders, updates and news of legislative developments;
- They also issue Creditors' Guides which is a set of guides suitable for distribution to unsecured creditors which explain the rights of creditors during an insolvency process;
- Effective lobbying and liasioning between the stakeholders to the profession of Insolvency like IPs, Companies, Business Community and Government;

Role of an Insolvency Practitioner in case of Bankruptcy, DRO and IVA:

- Insolvency practitioners act as bankruptcy trustee, and supervisors in Individual Bankruptcy and IVA;
- They assist as specialist Debt Relief Order (DRO) adviser, also called an approved intermediary.
- As DRO advisers, they will check that whether a person is eligible to apply and that a DRO is right for him.
- Insolvency Practitioners are registered as a DRO adviser at most local Citizens Advice Bureaux.
- Sell the assets of the person who owes money after the order of

adjudicator and distribute that in the creditors;

- An IP may act as a the trustee in the individual bankruptcy;
- In cases of IVA, IVAs must be supervised by an insolvency practitioner. Pending the approval of the arrangement, the insolvency practitioner will act as the nominee and will usually become the supervisor once the arrangement comes into effect.
- Interviewing the Individual going under bankruptcy, to check the information he/she has about debts and assets of the individual. IP will ask for details, for example about pensions or savings, the individual will have to complete a detailed questionnaire.

●●●

ORDER FORM

SPECIAL OFFER
ICSI IIP MEMBERS
On Special Rates Mentioned as under

Name of Products	Price : ₹
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