THE CIFL NEWSLETTER

October 2021

VOL. 1 | ISSUE 4

Published By:

Centre for Insolvency and Financial Laws
Maharashtra National Law University Mumbai

A Knowledge Initiative

PSL Advocates & Solicitors

(Cases Referred: 16th September to 20th October)

Supreme Court Pronouncements

1. RAJENDRA NAROTTAMDAS SHETH & ANR V. CHANDRA PRAKASH JAIN & ANR

NCLAT Pronouncements

3. JAYESH N. SANGHRAJKA V. THE MONITORING AGENCY

5. TELANGANA STATE TRADE PROMOTION CORPORATION V. A.P. GEMS & JEWELLERY PARK PRIVATE LIMITED & ANR.

7. CROWN TOBACCO COMPANY PVT. LTD. V. CRALE FOODLINKS PVT. LTD. & ORS.

9. R VELU V. INVENT ASSETS SECURITISATION & RECONSTRUCTION PVT LTD

10. KESHAV AGRAWAL VS. ABHIJIT GUHATHAKURTA

11. RAVINDRA G. SAPKAL V. SAMATA NAGARI SAHKARI PATSANTHA MARYADIT

13. BIJOY PRABHAKARAN PULIPRA RP PVS MEMORIAL HOSPITAL PVT. LTD. VS. STATE TAX OFFICER

15. SUSPENDED MANAGEMENT OF JAY POLYPACK PVT. LTD. V. SGV FOILS PVT. LTD.

16. IN THE MATTER OF MR. SUNDARESH BHAT, LIQUIDATOR OF ABG SHIPYARD LIMITED

17. CHAND PRAKASH MEHRA V. PRAVEEN BANSAL IRP OF SILVERTON SPINNERS LTD. & ORS.

18. NARENDRABHAI SHAH V. LIMFA PTE LTD. & SHRI SUNIL KUMAR AGARWAL

20. AMANAT RANDHAWA HOTELS PVT. LTD V. SHASHI KANT NEMANI AND ORS

22. SACH MARKETING PVT. LTD. V. MS. PRATIBHA KHANDELWAL

24. MONITORING AGENCY OF ANUSH FINLEASE & CONSTRUCTION PRIVATE LIMITED V. STATE BANK OF INDIA

25. DAMODAR VALLEY CORPORATION V. COSMIC FERRO ALLOYS LIMITED

26. RNY HEALTHCARE SERVICES PVT. LTD. V. BOURN HALL INTERNATIONAL INDIA PVT. LTD & ORS.

27. HARISH RAGHAVJI PATIL V SHAPOORJI PALLONJI FINANCE PRIVATE LIMITED

28. DINESH GUPTA V VIKRAM BAJAJ LIQUIDATOR, M/S BEST FOODS LTD.

29. SAI PEACE AND PROSPERITY APARTMENT BUYERS ASSOCIATION V. ASK INVESTMENT MANAGERS PVT. LTD. &

29. V S SURESH V. ASK INVESTMENT MANAGERS PVT. LTD. & OTHERS

31. P R VENKATESH (PROMOTER) VS. SRIPRIYA KUMAR & ORS.

31. DEEPAK PARASURAMAN & ANR. VS. SRIPRIYA KUMAR & ANR.

32. PANDURANG RAMCHANDRA SHINDE V. VIJENDRA KUMAR JAIN

NCLT Pronouncements

34. DR. MANJULA RAMACHANDRAN V. C.A. MAHALINGAM SURESH KUMAR, LIQUIDATOR OF RAIHAN HEALTHCARE PVT. LTD.

35. BOHRA INDUSTRIES LIMITED THROUGH ITS RP V. NATIONAL STOCK EXCHANGE OF INDIA LTD., THROUGH ITS SENIOR

	Title	Abbreviation
1.	Adjudicating Authority	AA
2.	Committee of Creditors	CoC
3.	Corporate Insolvency Resolution Process	CIRP
4.	Goods and Services Tax	GST
5.	IBBI (Insolvency Resolution of Corporate Person) Regulations, 2016	CIRP Regulations, 2016
6.	IBBI (Liquidation Process) Regulations, 2016	Liquidation Regulations, 2016
7.	Insolvency and Bankruptcy Board of India	IBBI
8.	Insolvency Professional(s)	IP(s)
9.	Interim Resolution Professional(s)	IRP(s)
10.	National Company Law Appellate Tribunal	NCLAT
11.	National Company Law Tribunal	NCLT
12.	Regulation	Reg.
13.	Reserve Bank of India	RBI
14.	Resolution Professional(s)	RP(s)
15.	Section	Sec.
16.	Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act	SARFAESI Act
17.	The Insolvency and Bankruptcy Code, 2016	The IBC, 2016
18.	Versus	v.

SUPREME COURT PRONOUNCEMENTS

The AA is not barred from examining material placed on record to determine the period of limitation.

RAJENDRA NAROTTAMDAS SHETH & ANR v. CHANDRA PRAKASH JAIN & ANR

Court	Supreme Court of India
Judgement Dated	September 30, 2021
Bench	Justice L. Nageswara Rao, Justice B.R. Gavai, and Justice B.V. Nagarathna
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 7; The Limitation Act, 1973 - Section 18 and Section 19; Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 19.

.

Brief Background

The corporate debtor in this case is R.K. Infratel Ltd. and the appeal was filed by Rajendra Narottamdas Sheth (hereinafter appellant), one of the suspended directors of the corporate debtor. The corporate debtor is in the business of setting up underground fibre networks and deals primarily with corporate entities and financial institutions. The financial creditor in the case, Union Bank of India (hereinafter respondent) sanctioned loans in favour of the corporate debtor, the dues of which were not received. As on September 30, 2014, the corporate debtor's account was declared to be non-performing. Post declaring the account an NPA, the respondent had issued a notice for recovery of dues on October 01, 2014. In addition to this, the respondent had also filed an application before the DRT under Sec. 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for recovery of dues from the corporate debtor.

The respondent had filed an application under Sec. 7 of the IBC, which was admitted on June 01, 2020. The claim made by the respondent was that the corporate debtor owed to the respondent a sum amounting to ₹24 Cr, as on March 31, 2019. The respondent had also attached a debit balance confirmation letter dated April 07, 2016, signed by the corporate debtor in support of the abovementioned claims. The contention of the corporate debtor was that the application was time-barred and also that the application under Sec. 7 was untenable due to the ongoing proceedings before the DRT. It was held by the AA vide order dated June 01, 2020 that the application was not barred by limitation. The AA also rejected the contention of the corporate debtor stating that the application was untenable as it was filed by the Power of Attorney (hereinafter POA) holder on behalf of the respondent. The primary contention of the corporate debtor was that the payments made by it to the bank after its account was declared as an NPA could not extend the period of limitation. It was also contended that the "cut-back offer" could not be considered for attracting Sec. 19 of the Limitation Act, 1963. It was further argued that even Sec. 18 of the Limitation Act was not applicable to the given case.

Issue

i. Whether the application filed by a 'Power of Attorney' holder is maintainable under Sec. 7 of the IBC?

ii. Whether the application filed under Sec. 7 is barred by limitation?

Decision

Both parties relied on *Palogix Infrastructure Private Limited* v. *ICICI Bank Limited*[1], to support their contentions. The NCLAT in its judgement had held that a 'power of attorney holder' is not competent to file an application under Sec. 7 on behalf of the financial creditor, making certain observations. It was explained that the general authorisation given to an officer of the financial creditor by means of a POA would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under Section 7 of the IBC, merely because the authorisation was granted through a POA.

Moreover, the NCLAT in *Palogix Infrastructure* had held that if the officer was authorised to sanction loans and had done so, the application filed under Sec. 7 of the IBC cannot be rejected on the ground that no separate specific authorisation letter has been issued by the financial creditor in favour of such officer. In such cases, the corporate debtor cannot take the plea that while the officer has power to sanction the loan, such officer has no power to recover the loan amount or to initiate CIRP, in spite of default in repayment. The Supreme Court in its decision approved of this view that was taken by the NCLAT, thereby clarifying that the application has been filed by an authorised person and the contention of the appellant does not stand.

With respect to the limitation period, the appellant had contended that the date of default is September 30, 2014 and submitted that the Sec. 7 application was filed on April 25, 2019. It was also mentioned that apart from the debit balance confirmation letter, no other document extending the period of limitation had been filed with the Sec. 7 application. The appellant had relied on the case of *Babulal Vardharji Gurjar* v. *Veer Gurjar Aluminium*

[1] *Company Appeal (AT) (Insol.) No. 30 of 2017*

Industries Private Limited[2]. The respondent had submitted that the material on record was sufficient to prove that there was acknowledgment of the debt till the year 2019 which was why the application was not barred by limitation.

The Supreme Court stated that there is no dispute with regards to the date of the default, which is September 30, 2014. It stated that even after considering the debit balance confirmation letter dated April 07, 2016, the application would still be barred as the time period exceeded the stipulated time period of three years. However, the corporate debtor had, in its reply before the AA placed on record a letter dated November 17, 2018, which detailed the amount repaid till September 30, 2018 and acknowledged the amount outstanding as on September 30, 2018. On the basis of this letter and the record showing that the corporate debtor had executed various documents amounting to acknowledgement of the debt even in the financial year 2019-20, the NCLT was of the opinion that the application was filed within the period of limitation. The said view was upheld by the NCLAT.

It was stated that while the decision to admit an application under Sec. 7 is typically made on the basis of material furnished by the financial creditor, the AA is not barred from examining the material that is placed on record by the corporate debtor to determine that such application is not beyond the period of limitation. In the present case, if the documents constituting acknowledgement of the debt beyond April, 2016 had not been brought on record by the corporate debtor, the application would have been fit for dismissal on the ground of lack of any plea by the Financial Creditor before the AA with respect to extension of the limitation period and application of Sec. 18 of the Limitation Act. In light of the above, the Supreme Court dismissed the Appeal.

Comments

The Supreme Court in the case at hand has adequately and reasonably expanded the scope of documents that can be perused in order to determine the limitation period for an application. The decision must be appreciated as it minimises the scope of parties trying to use loopholes to absolve themselves from their liabilities.

"ISHAAN WAKHLOO

[2] *(2019) 15 SCC 209*

NCLAT PRONOUNCEMENTS

"Success Fee" for RP is not part of IBC

JAYESH N. SANGHRAJKA v. THE MONITORING AGENCY

Court	National Company Law Tribunal, New Delhi
Judgement Dated	September 20, 2021
Bench	Justice A.I.S Cheema
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 5(13), 208(2).

Brief Background

The NCLT had earlier, by an order, disallowed success fees to the RP of an amount of Rs. 3 Cr. Pursuant to which this appeal had been filed before the AA (NCLT, Principle Bench, New Delhi), by the RP of the corporate debtor – Mr. Jayesh N. Sanghrajka, Ariisto Developers Pvt. Ltd., and the respondent is the Monitoring Agency of the corporate debtor. The grievance raised is that the approval of the success fees was a commercial decision of the CoC and the AA could not have interfered with the same while approving the resolution plan and directing distribution of the amount set apart for success fees. Subsequently, the AA appointed an *amicuscuriae*, Advocate Mr. Sumant Batra, to assist regarding this matter.

The appeal had referred to the various efforts made by the appellant during the course of CIRP, as the RP – including handling assets worth Rs. 1089 Cr. of the corporate debtor; convening more than 20 hearings before the AA, Appellate Tribunal and the Hon'ble Supreme Court; handling different classes of stakeholders which included approx. 100 number of Financial Creditors, approx. 400 number of homebuyers; successfully getting the CoC's approval on the resolution plan, etc. Further, it was also contended that only the CoC can consider if the success fee is to be paid and what should be the success fees, and the AA cannot look into this aspect as it is part of commercial wisdom of the CoC. If the AA did not agree with the success fees, the resolution plan had to be sent back and the AA could not have meddled with the CIRP costs which are part of the Resolution Plan. Particularly relying on Reg. 34, the CoC has to fix the expenses to be incurred by the RP and the expenses include fees which will constitute Insolvency Resolution Process Costs.

However, the *amicus curiae* highlighted that in the IBC and the Regulations, there is no express provision for grant of success fee. Sec. 208(2)(a) states that the IP is duty bound to take reasonable care and diligence while performing his duties. The RP has to perform function in such a manner and subject to such conditions as may be specified. Further, under para 25 to 27 of the Code of Conduct in IBBI (Insolvency Professionals) Regulations, 2016 (hereinafter IP Regulations), it states that the RP can charge remuneration only in a transparent manner and the remuneration should be a reasonable reflection of the work and should not be inconsistent with the Regulations. Neither the IBC nor the Regulations have quantified as to what would be the remuneration or the form in which the fees may be paid or charged. The quantum of fees can be fixed by the CoC but it would be subject to scrutiny by the AA as what is a reasonable fee is context specific and it is not part of the commercial decision of the CoC. The CoC exercised commercial decision with regard to resolution plan which is required to be approved and although CIRP Costs are required to be paid on priority, the reasonableness of fees is not part of commercial decision. The *amicus curiae* had also relied on judgment in the matter of *Alok Kaushik* v. *Bhuvaneshwari Ramanathan & Ors*.[3], to submit that the Hon'ble Supreme Court has held that NCLAT has got power to determine fees and expenses etc. payable to a professional.

Issue

Whether an RP can charge a success fee from the CoC and whether such success fee is justiciable?

Decision

The Tribunal held that 'success fees' is more in the nature of contingency and speculative, and is not part of the provisions of the IBC and the Regulations. Therefore, the same is not chargeable. It further held that even if it is to be said that it is chargeable, the manner in which it was last minute pushed at the time of approval of the resolution plan and the quantum are both, in the present case, improper and incorrect. Accordingly, the appeal was dismissed.

Comments

If the RP seeks to have success fee at the initial stage of CIRP, it would interfere with independence of RP which can be at the cost of corporate debtor, and if the fee is claimed when the Resolution Plan is going through or after the Resolution Plan is approved, it would be in the nature of gift or reward. As rightly opined by the Tribunal – 'success fees' are speculative and contingent in nature. Therefore, the fee payable to the insolvency

[3] *(2015) 5 SCC 787*

RPs should be directly related to and necessary for the CIRP and that the same should be in consonance with the integrity and independence of such professionals. Further, any such success fee eats into the proceeds available for distribution for the benefit of the creditors. Thus, having the AA's have a look into such matters becomes of essence, instead of solely leaving it to the discretion of the CoC.

"DIYA DUTTA

A 'related party' of the corporate debtor cannot occupy a seat on the CoC

TELANGANA STATE TRADE PROMOTION CORPORATION v. A.P. GEMS & JEWELLERY PARK PRIVATE LIMITED & ANR.

Court	National Company Law Tribunal, Chennai
Judgement Dated	September 21, 2021
Bench	Justice M. Venugopal, Mr. Kanthi Narahari (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 5(24), Section 29A; Companies Act, 2013 - Section 2(27).

Brief Background

The instant proceedings arose from an appeal of an order passed by the AA. The appellant (Telangana State Trade Promotion Corporation) was the Trade Promotion Corporation for the State of Telangana. Its predecessor, the Andhra Pradesh State Trade Promotion Corporation had entered into a Memorandum of Understanding with IOI Corporation of Malaysia for development of a jewellery show room through a special purpose vehicle (hereinafter, SPV). This SPV was essentially a joint venture between the two parties that would be funded to undertake the aforesaid development. Part of such funding occurred through grant of a loan bearing 11% interest, in exchange for allotment of equity and preferential share to the appellant. IOI Corporation also created a subsidiary to invest into the SPV in exchange for a similar consideration. Once this was done, land owned by the appellant was transferred to the SPV. In this respect, Phoenix Tech Tower Pvt. Ltd. Telangana (second respondent) gave a loan of Rs. 9 crores to the corporate debtor. When a payment default had occurred, a Sec. 7 application filed by them to initiate insolvency was subsequently admitted. In this case, interestingly, the appellant's Managing Director was a Director and first shareholder of the corporate debtor, and was responsible for executing share transfer agreements related to the transaction.

After the appellant was given a seat on the CoC, the respondent had filed an application for removal of the appellant on grounds that it is a 'related party' under Sec. 5(24) of the IBC. The NCLT had accepted this submission and had ordered reconstitution of the CoC. *Inter alia*, the NCLT found that despite being a nominee Director on the Board of the corporate debtor, the Director exercised significant influence on its affairs by overseeing its functioning.

Issue

Was the appellant a 'related party' exercising 'control' over the corporate debtor, in terms of Sec. 5(24) of the IBC, and thus ineligible to have a seat on the CoC?

Decision

The NCLAT first ventured into understanding the meaning of 'control'. It referred to precedent in company law jurisprudence and noted that to check for 'control', "*the real test is whether a person controls either the steering or the accelerators, gears and brakes*". In effect, this requires a factual examination as to whether there is a power to appoint majority Directors or influence policy decisions directly or indirectly. Further, the NCLAT relied on *Phoenix ARC Pvt. Ltd.* v. *Spade Financial Services Ltd. & Ors*[4]. and *Arcelor Mittal India Private Limited* v. *Satish Kumar Gupta*[5] to state that the expression 'control' only covers 'positive control'.

In the present case, the appellant's Managing Director was a Director of the corporate debtor. According to Article 62 of the Articles of Association, this Director was nominated by the Appellant and provided binding directions and instructions with respect to matters concerning the corporate debtor. Additionally, the Articles of Association also indicated that any important business decisions relating to the corporate debtor could occur only when there was an affirmative vote of three or more Directors, of which at least one vote must be that of the nominated director of the Appellant.

Thus, a combined reading of all these facts indicated that the appellant exercised 'control' and was a 'related party' under Sec. 5(24) of the IBC having the power to influence affairs. Therefore, the NCLAT concurred with the view of the NCLT and refused interference.

Comments

This decision lays down the correct position in law and on facts. Within the framework of the IBC, Phoenix and ArcelorMittal are leading authorities on the proposition that control, or the ability to exercise influence over management or policy decisions, can occur through management rights or agreements and require a case-by-case factual examination. It is not always determined merely based on the shareholding percentage. Ensuring control of external creditors on the CoC is important to prevent sabotage of the resolution process by the corporate debtor via its related parties. Factually, the Articles of Association (specifically Article 62) and the voting arrangement for management decisions indicated

[4] (2021) 3 SCC 475

[5] (2019) 2 SCC 1

that the nominee Director could influence the daily working of the corporate debtor, which effectively amounts to 'control' under Section 5(24) of the IBC. Thus, the NCLAT was correct in dismissing the appeal.

"PARINA MUCHHALA

All claims prior to 2015 are time-barred and there are pre-existing disputes between the parties on account of the pending suits for claiming tenancy rights and under the Specific Relief Act, 1963, which is sufficient to reject the application under Sec. 9 of the IBC.

CROWN TOBACCO COMPANY PVT. LTD. v. CRALE FOODLINKS PVT. LTD. & ORS

Court	National Company Law Appellate Tribunal Principal Bench, New Delhi
Judgement Dated	September 30, 2021
Bench	Justice Anant Bijay Singh
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Sections 5(20), 5(21).

Brief Background

The appellant and operational creditor, Crown Tobacco Company Pvt. Ltd (hereinafter Crown Tobacco) had preferred this appeal against the order passed by the NCLT, Mumbai Bench dismissing the Company Petition filed under Sec. 9 of the IBC.

Crown Tobacco was in possession of valid Restaurant, Bar, Bakery and Eating House licenses for a bungalow in Mumbai but was unable to exploit them for want of modern skills and commitment to other businesses. The respondent and corporate debtor, Crale Foodlinks Pvt. Ltd. (hereinafter Crale Foodlinks), having the requisite expertise in the hospitality industry approached Crown Tobacco to operate a Restaurant and Lounge Bar from the Business Premises.

A Business Conducting Agreement (hereinafter BCA), was entered into by both the parties in April 2010, operative for a period of five years. Two supplemental agreements were subsequently entered into, a clause in which had the effect of extending the BCA for another 2 years, expiring in September 2017. The BCA provided for a monthly Business Conducting Fee of 10% of the Gross Revenue, which was revised to 11% for the extended period. The supplemental agreement contained a clause providing that any increase in municipal taxes, levies, cess or duties subsequent to the commencement of the BCA were to be borne by the Crale Foodlinks, while the increase in the municipal property taxes was to be shared in equal proportions between the parties.

On the expiration of the BCA by efflux of time, the business conducting fee and utility bills for the months of August and September and the Municipal Assessment Taxes for the period between June 2010 to September 2017, amounting to a total of Rs. 35,52,022 remained outstanding. The failure to pay the dues after repeated requests led Crown Tobacco to issue a Demand Notice under Sec. 8 of the IBC, in response to which Crale Foodlinks denied any liability to pay any outstanding amounts. Pursuant to this, Crown Tobacco had filed Company Petition under Sec. 9 of the IBC before the NCLT. The NCLT had dismissed the petition on the grounds of locus of the applicant and the claims prior to 2015 being time-barred. Hence, Crown Tobacco had preferred this appeal before the NCLAT against the order of dismissal of its application under Sec. 9 of the IBC.

Issue

Whether the application made by Crown Tobacco under Sec. 9 of the IBC was liable to be dismissed, as was done by the NCLT?

Decision

The decision given by the NCLAT in this case affirms the order of the NCLT wherein the application made under Sec. 9 by Crown Tobacco was dismissed. The issue considered by the NCLT was whether the amount claimed by Crown Tobacco fell within the definition of "operational debt", thus according it the place of an operational creditor? The NCLT had held that because the claims of Crown Tobacco, which were pertaining to the outstanding utility bills and property taxes, were not in the nature of claims against provision of goods, services, employment or government dues as required under Sec. 5(21), they could not be categorized as operational debt and thus, Crown Tobacco was not the operational creditor. Hence, the NCLT had dismissed the application for the locus of the applicant and also for the claims prior to 2015 being time-barred. The NCLAT reiterated the same in its decision.

Comments

The NCLT in its judgement delves into the issue whether the claims pertaining to electricity bills and municipal taxes amount to operational debt within the meaning of Sec. 5(21) of the IBC. The NCLT held that these claims do not fall within the category of goods and services provided by the creditor, as specified under Sec. 5(21). This reasoning is also in line with the view taken by the NCLAT in the case of Sanjeev Kumar v. Aithent Technologies Private Limited [Company Appeal (AT) (Insolvency) No. 474 of 2020] where the court clarified that "any debt arising without nexus to the direct input to the output produced or supplied by the corporate debtor, cannot, in the context of Code, be considered as

an operational debt, even though it is a claim amounting to debt". Further, the NCLT held that since rent payable under lease agreements itself does not fall within the category of operational debt, in accordance with the judgement in Ravindranath Reddy, municipal taxes and electricity bills payable under the business conducting agreement stand on a lesser footing and cannot be considered as an operational debt.

The NCLAT, on the other hand, did not deal with this issue of whether the amount claimed as debt by Crown Tobacco can be categorized as "operational debt" under the IBC. Instead, the NCLAT, while agreeing with the findings of NCLT, held that all claims prior to 2015 are time-barred and all claims between 2015-2017 are disputed on account of the pending suits for claiming tenancy rights and under the Specific Relief Act, 1963, which is sufficient to reject the application under Sec. 9 of the IBC.

Even if prior disputes were not existent in the present case, with the current position established in the case of Ravindranath Reddy, rent and other dues payable under the lease agreement do not amount to operational debt. Until this position is changed by the Supreme Court, dues under a Business Conducting Agreement would also not amount to operational debt and therefore, the order of the NCLAT stands soundly in conformity with the present position of law.

"PAVIT KAUR

If 330 days are complete and the resolution applicant fails to implement the plan, the AA should pass an order of liquidation under Section 33 of the IBC

R VELU v. INVENT ASSETS SECURITISATION & RECONSTRUCTION PVT LTD

Court	National Company Law Appellate Tribunal, Chennai
Judgement Dated	September 21, 2021
Bench	Justice M. Venugopal
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 33.

Brief Background

The present appeal was filed to challenge the order passed by the AA (NCLT, Kochi Bench) dismissing the application filed by the appellant for ordering liquidation of the corporate debtor owing to the fact that the successful resolution applicant (respondent) had failed to implement the approved resolution plan.

As per the approved resolution plan, the respondent was required to pay a sum of Rs. Twenty-five lakhs (after adjusting the performance guarantee of Rs. Twenty-five lakhs) as first instalment and the balance of Rs. Fifty lakhs as the final instalment. The entire resolution plan amount was to be paid within 15 days of receipt of Order by the respondent. An email was later received from the respondent seeking withdrawal of the approved resolution plan and refund of performance guarantee of Twenty-five lakhs. The issue was discussed in the Monitoring Committee meeting and it was resolved that once the resolution plan has been approved by the AA, the same cannot be withdrawn. In view of withdrawal of plan by the respondent, the appellant filed an application before the AA seeking liquidation of the corporate debtor on the basis of the recommendations by the financial creditor in the Monitoring Committee Meeting.

The NCLT had held that it cannot either order Liquidation or direct the refund of the EMD amount, as this Tribunal has become functus officio after approval of the resolution plan by the AA, with the consent of both the parties. It observed that it cannot exercise its powers under Sec. 60(5) of the IBC and recall its own orders.

Issue

Whether the AA should have considered the prayer of the appellant with regard to liquidating the corporate debtor?

Decision

The NCLAT held that if 330 days had been completed and the resolution applicant had failed to implement the plan, the AA ought to have passed the order of liquidation as per the provision of the IBC.

In accordance with Sec. 33(3), the NCLAT is of the view that the appellant had rightly moved the application under Sec. 60(5) read with Sec. 33 of the IBC praying the AA to pass an order of liquidation of the corporate debtor for the reason that the respondent/resolution applicant did not implement the plan as mandated by the IBC. Further, the respondent/ resolution applicant failed to comply with the conditions as stipulated in the plan and directions given by the AA. The NCLAT noted that the respondent had failed to implement the plan in its totality and on completion of 330 days, the company ought to have been liquidated by passing appropriate orders.

The Tribunal did not address the issue of forfeiture of the performance security and withdrawal of the proposal. It was of the view that their authority is limited to the reliefs requested by the appellant before the AA, which were not followed.

Comments

The decision by the NCLAT is correct as Section 33(3) unambiguously states that if the corporate debtor fails to implement the approved resolution plan then the AA must pass an order under Section 33. Hence, an error has been made by the AA, in this case, by not passing a liquidation order. NCLAT was right in following the settled provision of law. Additionally, Section 12 states that the CIRP process should be completed in 330 days. However, in the current case, the CIRP process was not completed in the said time frame. The IBC is a crucial piece of legislation that attempts to strengthen, speed up, and enhance the efficiency of the bankruptcy resolution process. This order of the NCLAT seems to have upheld the time-limit of the insolvency process which is the very purpose of the IBC.

"MONIKA SAINI AND ANUBHAV SINGH

The AA cannot interfere with the commercial wisdom of the CoC

KESHAV AGRAWAL v. ABHIJIT GUHATHAKURTA

Court	National Company Law Appellate Tribunal, New Delhi
Judgement Dated	September 20, 2021
Bench	Justice Jarat Kumar Jain, Member (Judicial), and Dr. Ashok Kumar Mishra, Member (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 9, Section 30(2) Section 60(5), Section 238; Companies Act, 2013 – Section 66.

Brief Background

The Appellant in the present case was the shareholder of the corporate debtor, a listed company. The appellant had filed this Appeal against the order of the NCLT. After approval of the resolution plan, the shareholders of the company lost their entire lifetime investment, causing severe mental and financial distress to the appellant. The appellant argued that the RP is responsible for evaluating the resolution plan and ensuring that it complies with all current legal requirements under Sec. 30(2)(e). As per the appellant, the AA only has to satisfy itself as to whether the requirements as referred to in Section 30(2) of the IBC has been complied with or not. It was argued that in the present case, the AA did not ensure compliance with the rules pertaining to share capital reduction under Sec. 66 of the Companies Act 2013; the NCLT Rules 2016; and the SEBI Regulations 2009. On compliance to the said provisions, the appellant, while relying on the judgement of *Macquarie Bank Ltd.* v. *Shilpi Cable Technologies Ltd.*[6], further contended that the non-obstante clause in Sec. 238 of the IBC will not override the Advocates Act. Given that there is no contradiction between the provisions of IBC and Advocates Act, their compliance is imperative. Sec. 238 of the IBC does not overrule Sec. 66 of the Companies Act, 2013 and the SEBI Regulations (Delisting of Equity Share Regulations 2009, Listing Obligations and Disclosure Requirements Regulations 2015, and Substantial Acquisition of Shares and Takeovers Regulations, 2011) because there is no conflict between these two laws. As a result, their compliance is required, and the resolution plan was approved in contravention of the provisions of the law. The respondent on the other hand submitted that it cannot be said that the Resolution Plan is approved in contravention of provisions of Section 66 of the Companies Act, 2013 or any other law for the time being in force.

Issue

Whether RP had examined the resolution plan as per Section 30(2) of the IBC, and whether the same was approved in contravention of the provisions of the Companies Act, 2013 and the SEBI Regulations?

Decision

The NCLAT referred to the Supreme Court judgment in the matter of *Jaypee Kensington Boulevard Apartments Welfare Association and Ors*[7]., wherein it was observed that there is no scope for the AA to hinder with the commercial pronouncement of the CoC. If the AA finds any inadequacy in the resolution plan, the AA may send the resolution plan back to the CoC for re-submission (after satisfying the parameters delineated in the IBC) but, it does not have the power to change the resolution plan approved by the CoC. Further, as per Section 30(2)(e) of the IBC, if any approval of shareholders is required under the Companies Act, 2013 for implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of the Companies Act. Thus, according to the NCLAT, the aforementioned matter addressed all the objections which were raised by the appellant in the present case. The objections sought by the minority shareholders were dismissed as they were not recognized as legal grievances. Hence, the NCLAT, finding no merits in this case, dismissed the appeal.

Comments

This is a welcome judgment. It has followed the path laid down in Jaypee and ensured that the status quo surrounding the degree of the AA's jurisdiction was maintained. The AA does have eventual authority over whether a resolution plan can be executed, from the viewpoint that the resolution plan is in harmony with the requirements laid down under Sec. 30 of the IBC. However, AA cannot look into the merits of the commercial decision of the required majority of the CoC, as has been laid down in K. Sasidhar v. Indian Overseas Bank[8]*. This reinforces the aim of the IBC, i.e. the commercial freedom of corporations to make their own decisions.*

"MANISHA SARADE

[6] (2018) 2 SCC 674
[7] *2021 SCC SC 253*
[8] *(2019) SCC SC 257*

When future dates of a pending proceeding are known to the party, the party itself is solely responsible for participating in all such subsequent developments

RAVINDRA G. SAPKAL v. SAMATA NAGARI SAHKARI PATSANTHA MARYADIT

Court	National Company Law Appellate Tribunal, New Delhi
Judgement Dated	September 20, 2021
Bench	Mr. Justice A.I.S. Cheema (Judicial) and Dr. V. P. Singh (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 7; Limitation Act, 1963 - Section 14, 18 and 19.

Brief Background

The corporate debtor had availed a credit facility i.e. Working Capital Term Loan of Rs. 5 Crore for expansion of educational institutions. The financial creditor was a Cooperative Credit Society which granted it a consortium loan. The corporate debtor had mortgaged the properties of the educational facilities towards disbursement of the loan. The corporate debtor was expecting to receive grant-in-aid from Government of Maharashtra, however it was not released to them.

Therefore, the financial creditor had filed an application under Sec. 7 of IBC which was submitted to the AA and was subsequently admitted. The AA had permitted the respondent to file the amended Form -1 for proof of service. At the same time, the respondent had filed a Miscellaneous Application [hereinafter, MA] to amend the Sec. 7 Application. However, after the aforesaid order concerning submission of amended Form-1 was passed, the respondent had withdrawn the MA and requested time to amend the petition and file other documents. The AA ordered for such amendment to occur through use of an additional affidavit, and clearly indicated that this amendment was towards the main application. On this basis, it was argued by the respondent that the petition was not amended, and that even after defects being present in the application, it was admitted.

Meanwhile, the corporate debtor had sought time for amicable settlement of the matter, but this was not possible and so the matter had to be continued to be heard on merits. The appellant had argued that even after the AA directed the Registry to inform the corporate debtor about the next date, no Court Notice was issued due to the nationwide lockdown. The corporate debtor remained unrepresented in subsequent proceedings and the impugned order came to be passed only on the basis of the reply filed by the corporate debtor. It was argued that the reply filed by the corporate debtor was to the MA and not the Application and that the AA had wrongly interpreted that the corporate debtor has filed its Reply to the main petition. Thus, the appellant claimed that there was violation of Principles of Natural Justice.

Further, the appellant argued that the Company Petition filed should be barred by limitation, as it was filed in 2019 for a 2013 default. The appellant claimed that the period of limitation starts from the date of default, and the period of limitation would be three years which cannot be enlarged on the basis of subsequent acknowledgements.

Issue

Whether the appeal filed by corporate debtor was maintainable?

Decision

The Appellate Authority while dismissing the appeal stated that the party had appeared in the proceeding in the original forum where further dates were given. Also, since the pendency of the proceeding was known to the party, it is its own duty to keep track of the proceedings and to participate in future developments in the matter. The Tribunal rejected the defense of the appellant that it was not possible that a notice could not be served because of the nationwide lockdown, as it is an electronic age. The records showed that communications were sent on behalf of the financial creditor to the corporate debtor with regard to the dates on which the matter is coming up. Tracking reports were also filed to show delivery of the communications. Thus, there was no case of violation of Principles of Natural Justice.

The Tribunal, while relying on the Judgement of the Supreme Court in *Dena Bank* v. *C. Shivakumar Reddy & Anr.*[9], also held that the issuance of recovery certificate gives fresh right to recover the amounts for which the recovery certificate has been issued. In this case, the recovery certificate was issued after which part-payments were made. Hence, the Application filed under Sec. 7 was not time barred.

Comments

This judgment is in accordance with the legal regime and *judicial precedents. The NCLAT correctly dismissed the appeal as it prevents frivolous delays and evasion tactics used by the parties. The appellant was trying to take advantage of the nationwide lockdown to restart*

[9] Civil Appeal No. 1650 of 2020

hearings on the merits despite knowingly being absent on previous occasions. The Tribunal rightly stated that it is the responsibility of the party also to keep track of the proceedings and to participate in future developments in the matter. This ensures fair and timely justice. Further, the Tribunal correctly relied on the Dena Bank case to note that once a certificate of recovery is issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount specified in the Recovery Certificate. Thus, such a claim cannot be barred by limitation.

"MEGHA KAMBOJ

The exercise of revision of the GST assessment order is beyond the jurisdiction of the RP

BIJOY PRABHAKARAN PULIPRA RP PVS MEMORIAL HOSPITAL PVT. LTD. v. STATE TAX OFFICER (WORKS CONTRACT) SGST DEPARTMENT, KERALA STATE

Court	National Company Law Appellate Tribunal, Chennai
Judgement Dated	October 07, 2021
Bench	Mr. Justice Venugopal M. (Judicial) and Dr. V. P. Singh (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 60; CIRP Regulation - Regulation 10-14.

Brief Background

An application filed for initiation of CIRP under Sec. 9 of the IBC, 2016 read with Rule 6 of the IBBI (Application to AA) Rules, 2016 was admitted by the NCLT. The appellant was confirmed as RP based on the resolution passed by the CoC. During CIRP, the RP had revised the admitted claim amount of the respondent after due verification of the GST claim with the books of accounts of the corporate debtor and the electronic register maintained by the Respondent, in accordance with Reg. 14 of the CIRP Regulation. He had sent detailed information on the revision of the admitted claim to the respondent. Being aggrieved by the action of RP, the respondent' State Tax Officer had filed an MA before the AA under Sec. 60(5) of the IBC to allow the claim amount submitted by the respondent in full.

The AA had directed the appellant to file an appeal before the Joint Commissioner, State Sales Tax Department for a reassessment of the GST amount payable, based on the audited financial statements for the Financial Year 2018–19 and the Notification issued by the Government of India dated June 28, 2017 within two weeks from the date of the order. The RP had stated that after receiving proper and validated information from the promoters of the corporate debtor, the CoC, directed the RP to explore other possibilities to re-verify the claim amount. After that, with the permission of the CoC, the RP had filed Miscellaneous Application before the NCLT to issue necessary clarification to the appellant in respect to the filing of the appeal before the Joint Commissioner, SGST Department as directed by the NCLT. On the said clarification petition, the AA vide the impugned order had directed that there was no error in its earlier order, which was to be clarified by the Tribunal. This order was challenged in this appeal.

Issue

i. Whether the RP has the authority under Reg. 13 and 14 of the CIRP Regulations to file an appeal before the Joint Commissioner, GST, as part of the verification and determination of a claim submitted by the GST department in Form B?

ii. Whether the judgment, decree or order, if any, passed by the Appellate Authority under CGST Act pursuant to the appeal, against the corporate debtor shall be binding on corporate debtor when the moratorium declared by the NCLT by virtue of Sec. 14 of the IBC is in effect?

Decision

The NCLAT dismissed the appeal and held that the GST amount is an amount of tax levied under the assessment order as per the Goods and Service Act, 2017. It cannot be edited or reduced by the RP himself. Even if the IRP/RP was aggrieved by the order, they should have filed the appeal under Section 107 of the CGST/SGST Act, 2017, read with Rule 108 of the GST Rules, 2017.

Any revision of assessment orders also cannot be made under the pretext of Sec. 238 of the IBC. Sec. 238 cannot be read as conferring any appellate or adjudicatory jurisdiction in respect of issues arising under other statutes. The exercise of revision of the GST assessment order was beyond the jurisdiction of the IRP/RP. It is pertinent to mention that the IRP/RP was not having the adjudicatory power given by the GST Act.

Further the Tribunal held that the Reg. 14 of the CIRP Regulations only authorizes the IRP/RP to exercise power where the claim is not precise due to any contingency or other reasons. The Tribunal also relied upon the judgment of the Hon'ble Supreme Court in *Embassy Property Developers Private Limited* v. *State of Karnataka*[10], wherein it was held that Sec. 60 (5)(c) of the IBC is very broad. However, the decision taken by the Government or Statutory Authority in relation to the matter which is in the realm of public law, cannot be brought within the fold of the phrase "arising out of or in relation to the Insolvency Resolution" appearing in Sec. 60 (5) (c) of the IBC. In the instant case, the AA had rightly considered the statutory provision and suggested filing an appeal before the appropriate forum. However, the RP, considering the CoC as an authority in law, had exercised the powers of GST authorities. Therefore, the said act of the RP is without jurisdiction and not sustainable in law.

[10] *(2020) 13 SCC 308*

Comments

It is a good judgement in the eyes of law and is in accordance with the IBC. The Tribunal rightly held that the IBC is a complete code in itself. The CoC is empowered to exercise its commercial wisdom in the CIRP but it cannot exercise judicial power. The RP cannot supersede its powers as given by the IBC to exercise the powers under a different legislation, as they do not fall under its jurisdiction.

"**MEGHA KAMBOJ**

After constitution of the CoC the AA cannot in exercise of power under Rule 49(2) of the NCLT Rules, 2016 set aside the *ex-parte* admission order

SUSPENDED MANAGEMENT OF JAY POLYPACK PVT. LTD. v. SGV FOILS PVT. LTD.

Court	National Company Law Appellate Tribunal
Judgement Dated	September 20, 2021
Bench	Justice Jarat Kumar Jain, Member (Judicial), and Dr. Ashok Kumar Mishra, Member (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 – Section 9, Sec. 12A, Section 30A, Section 60(5), Section 61.

Brief Background

The appellant in the present case is the suspended management of Jay Polypack Pvt. Ltd., who had filed this appeal against the order of the NCLT, wherein the NCLT has disposed off the application on the ground that at a belated stage, the AA is unable to use their power under Rule 49 of the NCLT Rules, 2016.

The appellant while relying on the judgement of *M/s AKJ Fincap Ltd.* v. *Bank of India*[11], argued that the AA erred in refusing to set aside the *ex-parte* order despite the fact that notice was not properly served on the corporate debtor; thus, the AA has the authority to set aside the *ex-parte* order passed against the corporate debtor under rule 49 (2) of the NCLT Rules.

The respondent on the other hand relied on the judgment of *Union Bank of India* v. *Mansi Oils Grains Pvt. Ltd.*[12],and submitted that there was no error committed by the AA while passing the impugned order. The respondent contented that Rule 49 of the NCLT Rules, 2016 only provides for the setting aside of the *ex-parte* hearing, not a final decision of admission of CIRP, as a result of the challenged order and many other events and acts conducted under the IBC. The order of admission may not be set aside at this time since a new resolution plan is being looked at under the CIRP. The respondent had submitted that once the CoC is formed, the operational creditor and corporate debtor are bound by the procedure prescribed under Sec. 12A of the IBC read with Reg. 30A of the CIRP Regulations, 2016 as held by the Hon'ble Supreme Court in the case of *Swiss Ribbons Pvt. Ltd.* v. *Union of India*[13]

Issue

Whether the AA, in exercise of power under Rule 49(2) of the NCLT Rules, 2016, can set aside the *ex-parte* order for initiating CIRP under Sec. 9 of the IBC?

Decision

The Tribunal was of the view that once an application under Sec. 7 or 9 is approved and CIRP begins, the matter becomes in rem and because this is an in rem proceeding, the body in charge of monitoring the settlement process must be informed before any individual corporate debtor may settle its claim. Following the creation of the CoC, however, the AA is powerless to overturn even *ex-parte* admission rulings, and the corporate debtor must file an appeal under Sec. 61 of the IBC. In the present case, the AA had passed the impugned order after constitution of CoC, therefore, there is no illegality in the impugned order. As a result, the Tribunal ruled that if the problem is resolved between the parties, the operational creditor may submit an application for withdrawal under Sec. 12A of the IBC read with Reg. 30A of the CIRP Regulations, 2016.

Comments

There is a high chance that the corporate debtor settles the claim by itself without moving forward with the insolvency proceedings or even after initiation of CIRP. Thus, some power must be given to the AA to set aside or overturn the admission of frivolous proceedings which was done on the basis of the ex-parte order. Adding to this, even when the proceedings become in rem there should be certain balance maintained between the parties which are directly and indirectly affected by the insolvency proceedings.

"YASHI SINGH

[11] CA (AT)(Ins) NO. 178 of 2021
[12] *2019 SCC Online NCLT 7624*
[13] *(2019) 4 SCC 17*

The Board does not have the authority to interpret the application of provisions

IN THE MATTER OF MR. SUNDARESH BHAT, LIQUIDATOR OF ABG SHIPYARD LIMITED, COMPANY APPEAL (AT) (INSOLVENCY) NO. 398 OF 2021

Court	National Company Law Appellate Tribunal
Judgement Dated	September 20, 2021
Bench	Justice A.I.S. Cheema, J.
Relevant Sections	Insolvency and Bankruptcy Board of India Regulations, 2016 - Clause 12 of Schedule I and Section 196(1).

Brief Background

The appeal, in question, was filed by the liquidator of 'ABG Shipyard Limited' against impugned order passed by the AA in IA 698 of 2020 in C.P No. (IB) 53 of 2017. After the liquidation order was passed against the corporate debtor on April 25, 2019, a liquidator was appointed who after four consecutive attempts for sale of assets of corporate debtor through public auction could not succeed for reasons of the timeframe for payment being as short as of 15 days. An amendment to the Schedule I Clause 12 of the Regulations was made on July 25, 2019 which substituted period of 15 days by introducing 90 days as a period to make the payment of balance consideration, which was followed by a circular, dated August 26, 2019, for the purpose of clarifying that the application of the amendment had to be done in a prospective and not in a retrospective manner. This would mean that any liquidation orders passed before July 25, 2019 would not be qualified to fall under the ambit of the said amendment. The liquidator who had moved before the AA seeking directions on the same, was turned down and therefore, had filed the present appeal. The court appointed an *amicus curia*, Advocate Mr. Sumant Batra, whose report was to be considered for assistance of the court in the said matter.

Issue

i. Whether the circular dated August 26, 2019 would be applied prospectively or retrospectively?

ii. Whether the Board has the power to interpret guidelines along with issuing them?

Decision

The Appellate Body affirmed the report of the *amicus curiae* and observed that issuing such Circular, as one dated August 26, 2019, would defeat the laudable object with which Clause 12 was substituted. Moreover, it was observed that the said regulation does not show that the Regulation is to be applied only prospectively and in fact it "is an open-ended provision relating to procedural which in no way states that it will not apply to pending liquidation processes on the date of substitution." Additionally, the court also interpreted the power of the Board under Sec. 196(1) (p) or (t) that provides for them to issue guidelines and held that it cannot be expanded to interpreting provisions made, since, it is the job of Courts to do so and apply the law. Therefore, the provision can be applied to a liquidation order irrespective of the date whether the liquidation process started before July 25, 2019 or on or after July 25, 2019. The Court also made it clear that this would not apply to sales that were cancelled for default of payment, before the said date.

Comments

The Tribunal, very succinctly, has emphasized on the fact how interpretation and application of law falls under the ambit of the Courts, and not the guidelines that are issued - as circulars and guidelines are mere "external aids' to the provision. Further, the Tribunal has rightfully highlighted the open-endedness of the amendment; while it states that it is prospective in nature it in no way states that it will not apply to pending liquidation processes on the date of substitution. Shedding light on this very aspect and removing the ambiguity that persisted was much needed. This is a welcome decision in two folds - not only does it widen the scope of the amended Clause 12 of Schedule I of the Liquidation Regulations to being retrospective along with being prospective, but it also gives a liquidator enough liberty during the liquidation process.

"DIVYA SINGH

Personal documents executed between the parties cannot take away the statutory right of the Bank to initiate insolvency proceedings.

CHAND PRAKASH MEHRA v. PRAVEEN BANSAL IRP OF SILVERTON SPINNERS LTD. & ORS.

Court	National Company Law Appellate Tribunal, New Delhi
Judgement Dated	September 20, 2021
Bench	Justice A.I.S. Cheema, J.
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 7.

Brief Background

In the present factual matrix, the appellant - erstwhile Director of the corporate debtor - M/s. Silverton Spinners Ltd, had taken a credit facility initially from Canara Bank in 1995 and subsequently the respondent 2 - the State Bank of India and the Central Bank of India had become part of the lenders and had granted credit facilities to the corporate debtor. Necessary documents were executed. In 2010, there was a revival of structuring effort. The State Bank of India pointed out the acknowledgements of the corporate debtor and the existence of the outstanding debt which was in default.

The corporate debtor had the understanding that in the event of any default by the corporate debtor the lead banker - Canara Bank shall be the only authorized banker to initiate any recovery or restructuring proceedings against the corporate debtor. The other Banks had nominated Canara Bank as the lawful attorney for them.

The matter was first referred to the NCLT, Kolkata, who had acknowledged that there was outstanding debt which attracted provisions of Sec. 7 of IBC and thereby admitted the application. Now the matter stands before NCLT, New Delhi wherein the appellant is claiming that the State Bank of India could not have initiated proceedings under Sec. 7 of IBC.

Issue

Whether the documents executed between the parties which mandates one bank to initiate insolvency proceedings under Sec. 7 of IBC and debars another, is a valid document keeping in mind the IBC provisions?

Decision

The Tribunal, after hearing both the sides, took Sec. 7 of IBC into consideration, which provides that, financial creditor either by itself or jointly with other financial creditors or any other person on behalf of financial creditor, as may be notified by the Central Bank, may file an application for initiating CIRP against a Corporate Debtor before the AA when a default has occurred. In the same manner, the State Bank of India was part of the consortium and there are documents executed between the parties. But the material factor for Sec. 7 of IBC is that the State Bank of India is a financial creditor whose debt is outstanding and it was in default on the part of the corporate debtor and thus the State Bank of India has a right to move application under Sec. 7 of IBC. The personal documents between the parties cannot take away such statutory right of the bank to initiate proceedings. If the lead bank for any reason does not take steps or fails to take steps, the other banks in the consortium cannot be left high and dry without any remedy. Thereby, the AA upheld the decision given by NCLT Kolkata by allowing the application under Sec. 7 of IBC.

Comments

This judgment is seen to be a rather good judgment in law. The decision of the Tribunal is in accordance with the principles of IBC. According to Sec. 238 of the IBC, the IBC should prevail over any other law in contrary or anything that is in-consistent with any of the provisions of IBC. By the simple application of this section, the Appellate Tribunal is correct in holding that the personal documents between the parties cannot take away such statutory right of the Bank who is also the financial creditor, having the power to initiate insolvency proceedings. Additionally, if there exists a contract which goes against a statutory right of a person or institution or company, then such contract is void in the eyes of law. Similarly, in the present case the document executed between the parties is void as it is against the core principles of IBC as it restricts a financial creditor to initiate insolvency proceedings under Sec. 7 of the IBC.

"ANUSHKA FUKE

A foreign company can be represented by an agent and a mere technicality in the contractual relationship between the agent and the operational creditor cannot invalidate a demand notice

NARENDRABHAI SHAH v. LIM FA PTE LTD. & SHRI SUNIL KUMAR AGARWAL

Court	National Company Law Appellate Tribunal
Judgement Dated	September 20, 2021
Bench	Justice A.I.S. Cheema, Officiating Chairperson & Mr. V.P. Singh, Member (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 8, Section 9(3)(e)

Brief Background

The appellant (Narendrabhai Shah) [hereinafter, appellant] is the Director of Pioneer Globex Pvt. Ltd., the corporate debtor. The present appeal was filed by the appellant on behalf of the corporate debtor after the NCLT, Ahmedabad Bench admitted Respondent No. 1's (LIM FA PTE Ltd., the operational creditor) [hereinafter, respondent] application under Sec. 9 of the IBC and allowed the operational creditor to initiate CIRP against the corporate debtor. The application had been filed by the Respondent as the appellant had not paid the amount due to it under contract between it and the respondent.

In the appeal, the respondent had contended that Mr. Pratik Shah was appointed as the authorised representative of the respondent as per the Board Resolution of the respondent dated December 04, 2017. However, the appellant had contended that Mr. Pratik Shah had no authority to file the application before the AA and that he didn't have power of attorney to file on behalf of the respondent. The Appellant placed reliance on *Jaldhi Overseas Pvt. Ltd.* v. *Bhushan Poer & Steel Limited [2017 SCC Online Cal 4414]* to state that unless the document executed in a Foreign Country is apostilled, the same cannot be accepted as evidence. The appellant had also contended that there was no document of delivery of goods to the appellant. In terms of the respondent's contention of the Bill of Lading being a document of delivery as per Sec. 9(3)(e) of IBC, the appellant had contended that the material under the Bill of Lading was delivered to someone else.

Issue

Can a demand notice under Sec. 8 of the IBC be invalidated on the grounds of a minor technicality?

Decision

As for the appellant's contention of no power of attorney being present with Mr. Pratik Shah, the authorised representative, the Court held that the authorization was done properly. The Court did not refer to the findings of *Jaldhi Overseas Pvt. Ltd.* stating that there was a difference of facts between these two cases and that 'execution' and 'authentication' as under Sec. 85 of the Indian Evidence Act, 1872 were not required in this case. The Court also held that mere technicality in the contractual relationship between the agent and the operational creditor cannot invalidate the actions of the authorized representative. As for the appellant's contention of proper authority, the Court observed that the Board Resolution dated December 04, 2017 was signed by two operational creditors. Furthermore, while establishing the relevance of the Board Resolution, the Court relied on another document. That document was titled "TO WHOMSOEVER IT MAY CONCERN" and it was filed by the respondent along with the Board Resolution. Since this document was duly signed and stamped, the Court placed reliance on this document while considering the validity of the Board Resolution dated December 04, 2017.

As for the appellant's contention of non-existence of a document of delivery, the Court relied on the Bill of Lading. The Bill of Lading stated that the shipment being shipped was verified by representatives of the appellant. Apart from that, other documents which the NCLT had considered like the tax invoice, packing list, certificate of origin, etc. which had the stamp and signature of the appellant were also referred to by the Court to establish the existence of documents of delivery of goods. In terms of the contention that the material listed in the Bill of Lading was delivered to someone else, the Court relied on an email dated October 12, 2016 sent by Mr. Hardik Shah (the then Director of the Appellant) to info@pratikcorporation.com, who was in contact with the appellant for payments on behalf of the respondent. In that email, Mr. Hardik Shah had acknowledged the dues payable by the appellant. Therefore, if the appellant had not received the goods, there would be no reason for the then Director of the Appellant to accept that they planned to clear the payments. Based on these facts, the Court held that the AA was right in admitting the application under Sec. 9 of the IBC and therefore, it dismissed the Appellant's appeal.

Comments

The following case was one of non-payment leading to the existence of debt. There was no legitimate dispute on this debt; hence, the Court decided this case mainly on factual grounds with regards to the existence of a debt. The corporate debtor's allegation of there being an improper representative of the operational creditor (who is a company based out of Singapore) was rightly done away by the Court. The Court observed that a foreign company can be represented by an agent and a mere technicality in the contractual relationship between the agent and the operational creditor cannot invalidate a demand notice. Since the Courts are creditor friendly, such minor technicalities should be overlooked for protecting the interests of the creditors.

"SHUBHAM DHAMNASKAR

Once the Plan is approved by majority of the CoC as provided for under Section 30 of the Code, then no fresh plans may come in intervention of an already approved Plan.

AMANAT RANDHAWA HOTELS PVT. LTD v. SHASHI KANT NEMANI AND ORS.

Court	National Company Law Appellate Tribunal Principal Bench, New Delhi
Judgement Dated	October 7, 2021
Bench	Justice Anant Bijay Singh, Member (Judicial) and Ms. Shreesha Merla, Member (Technical)
Relevant Sections	IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - Regulation 36A.

Brief Background

The current appeal was preferred by the appellant and resolution applicant, Amanat Randhawa Hotels Pvt. Ltd. (hereinafter Amanat Randhawa) to challenge the orders of the AA in I.A. 2763 of 2021 and I.A. 2714 of 2021 respectively.

The IRP had issued a public announcement in Form A on December 25, 2020 for invitation of the expressions of interest (hereinafter, EOI) in submitting resolution plans for the corporate debtor as per Reg. 36A of the CIRP Regulations, 2016. On February 19, 2021, a further Form G was published to invite EOIs and the last date for submission of the plans was extended from April 26, 2021 to May 10, 2021. On June 16, 2021, Amanat Randhawa had requested the RP to place its offer before the CoC, but the same was rejected by the CoC on account of the delay in submitting the plan, much after the last date of submission. On June 21, 2021, the CoC had convened and with a 100% voting share had approved the resolution plan submitted by Mr. Sarabjit Singh, taking into account its feasibility and viability. On June 23, 2021, Amanat Randhawa had filed an application before the AA seeking directions for consideration of their EoI, which was rejected by the AA on July 8, 2021 in I.A. 2763 of 2021. Further, on September 6, 2021, the IRP had preferred an application in I.A. 2714 of 2021 under Sec. 30(6)/31 of the IBC seeking approval of the resolution plan by the CoC. Amanat Randhawa had prayed for deferring the finalization of the IRP's application on account of the pending appeal against the order of the AA, dismissing the earlier application in I.A. 2763 of 2021. In this application, Amanat Randhawa had proposed to deposit Rs. 60 crores before the hearing of the appeal, to show its bonafide intent and seriousness. The AA, while postponing the IRP's application, had directed Amanat Randhawa to pay Rs. 10 Cr. within seven days, such that the sum shall stand forfeited to the credit of IRP for the benefit of the corporate debtor in the event of dismissal of its appeal preferred before NCLAT, and a sum of Rs. 50 Cr., which shall be a refundable deposit not bearing any interest. Aggrieved by the conditions imposed, Amanat Randhawa further preferred an appeal against the order of the AA in I.A. 2714 of 2021.

The current appeal seeks to dispose off both the appeals filed against the order of dismissal of the application seeking directions for consideration of EOI, and the order imposing conditions in lieu of postponing the IRP's application until the disposal of the former.

Issue

i. Whether the resolution plan of Amanat Randhawa can be accepted after the time limitation specified in the public announcement has passed?

ii. Whether the AA acted arbitrarily in imposing the conditions for postponing the finalization of the resolution plan?

Decision

The Tribunal dismissed the challenge to non-consideration of the delayed submission of the resolution plan by adhering to the clear provision under Reg. 36A of the CIRP Regulations, 2016. It was recognised, in accordance with the decision in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.[14], that the AA and the Appellate Tribunal do not have an equity jurisdiction that can prevail over the business decisions taken by the CoC. In accordance with the decision in Chhatisgarh Distilleries Ltd. v. Dushyant Dave & Ors.[15] , the Tribunal also observed that it cannot direct the CoC to consider another plan, even when it proposes to invest a higher amount, when the CoC has accepted one plan in accordance with the provisions of law. Furthermore, the importance of adhering to timelines has been stressed upon in *Ebix Singapore Pvt. Ltd*. v. *Committee of Creditors of Educomp Solutions Ltd. & Anr.*[16], following which the delayed proposal of Amanat Randhawa ought not to be considered once a plan is already approved by a majority in the CoC.

[14] 2019 SCC OnLine SC 1478

[15] Company Appeal (AT) (Insolvency) No. 461 of 2019

[16] 2021 SCC OnLine SC 707

Comments

Timely completion of the resolution process is an important aspect under the IBC. The NCLAT was correct in not entertaining the proposal of Amanat Randhawa which was submitted way past the last date and adhering to the law well-established in the precedents. The IBC has an edge over the previous regimes because of the incorporation of and adherence to timeliness of the resolution process. Although the present case did not warrant the need to delve into the issue of whether the NCLT acted arbitrarily in imposing those conditions upon the Amanat Randhawa in lieu of postponing the finalization of the resolution plan as approved by the CoC owing to the dismissal of the application to consider the resolution plan, such decisions by NCLT can create uncertainties in the minds of successful resolution applicants regarding the execution of their plans, thereby defeating the objective of bringing about efficiency to the resolution process.

"PAVIT KAUR

Can a security deposit be treated as a financial debt or not?

SACH MARKETING PVT. LTD. v. MS. PRATIBHA KHANDELWAL, RESOLUTION PROFESSIONAL OF MOUNT SHIVALIK INDUSTRIES LTD.

Court	National Company Law Appellate Tribunal Principal Bench, New Delhi
Judgement Dated	October 7, 2021
Bench	Justice Anant Bijay Singh (Judicial Member), Shreesha Merla (Technical Member)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 5

Brief Background

The corporate debtor is a beer manufacturing company, namely Mount Shivalik Industries Ltd., and the appellant was a marketing agency which dealt with the corporate debtor in a contractual relationship. Herein, the appellant was appointed as a sales promoter for promotion of the beer by the corporate debtor and this was stipulated for a period of 12 months, via an agreement dated April 01, 2014. This agreement also carried a stipulation wherein a security deposit had to be paid by the appellant to the tune of Rs. 53,15,00/- which would carry interest at 21% p.a. Interest was to be provided on Rs. 7,85,850/- at 21% p.a. Consequently, the appellant provided an amount of Rs. 61,00,850/- in the year 2014.

Therefore, when the insolvency was started on June 12, 2018 against the corporate debtor, claims were filed by the appellant where Rs. 1,58,341/- was classified as operational debt and Rs. 1,41,39,410/- was claimed to be the financial debt owed by the corporate debtor to the appellant. The RP however addressed a mail on March 18, 2019 that the entire amount claimed as financial debt was considered as an operational debt. The appellant had then filed an interim application to quash this decision taken by the RP with the Jaipur Bench of the NCLT, upon whose order on the interim application, an appeal was preferred before the NCLAT.

Issue

Whether a security deposit kept with the corporate debtor which also accumulates interest by way of an agreement executed between the corporate debtor and the aggrieved party, would classify as financial debt under Sec. 5 of the IBC?

Decision

The Tribunal relied on a Supreme Court decision in order to ascertain the result of this particular matter. The decision in *Annamalai Chettiar* v. *Veerappa Chettiar*[17] was such where it was held that the decision whether the amount was a loan or a deposit would not only depend on the terms of the agreement but what must also be taken into consideration is the intention of the parties and the circumstances of the case. The two basic elements in order to ascertain whether it is a financial debt or not are that (1) there is a disbursal against consideration for the time value of money and (2) whether there is a commercial effect of borrowing. Since the amount which had been termed as a security deposit had an element of 21% interest p.a., it could be construed to have a commercial effect of borrowing. Since there was also a period of time mentioned for which the security deposit would be held under the agreement, it would go to show that there had been a time value of money which had been portrayed. The decision and rationale of another Supreme Court judgment of *Orator Marketing Pvt. Ltd.* v. *Samtex Desinz Pvt. Ltd*[18]. was taken into consideration and was applied in order to reach to the conclusion that the security deposit in this instant case was decided to be a financial debt under Sec. 5 of the IBC.

Comments

This is a fairly ambiguous and situational question which has been answered by the NCLAT in this case. Financial debt is defined under Sec. 5 of the IBC and therefore a literal interpretation would have denied the appellant any stand of being a financial creditor. However, a long-standing jurisprudence with regards to the classification of a security deposit has been taken into consideration and therefore the amount here has been given the nature of a financial debt. However, deciding such a crucial question with regards to the classification of a financial creditor at a stage wherein the CoC has already been formed and a resolution applicant has already submitted a resolution plan for approval could turn out to be dangerous. The amount of financial debt is not a small amount and runs above the Rs. 1 Crore mark. This could fairly alter the composition of the CoC and therefore the voting proportions that are given a significant amount of importance. However, the NCLAT has only decided on the question of financial debt here which was raised by the appellant and has sent the matter back to the NCLT in order to decide upon the continuation of the insolvency proceedings. In the instant scenario, the prayer was such that the amount be classified as financial debt and the appellant be classified as a financial creditor. It clearly stated that no interference would be sought with regards to the resolution plan approval and the CoC. Therefore, it becomes easier for the AA to adjudicate here. However, if the appellant, who is now classified as a financial creditor, had raised a query with regards to being inducted into the CoC as a matter of right, things

[17] *AIR 1956 SC 12*

[18] *Civil Appeal No. 2231 of 2021*

would turn tricky for the AA to adjudicate upon. This brings the question of whether it would then make sense for a question of such magnitude with regards to the insolvency proceeding to be addressed by the AA on such a timeline where the resolution plan has already been proposed.

"SHALIBHADRA DAGA

The assets held under Trust cannot be considered as the asset of the corporate debtor under Sec. 36(4) of the IBC

MONITORING AGENCY OF ANUSH FINLEASE & CONSTRUCTION PRIVATE LIMITED v. STATE BANK OF INDIA

Court	National Company Law Appellate Tribunal
Judgement Dated	October 4, 2021
Bench	Justice Anant Bijay Singh (Judicial Member), Shreesha Merla (Technical Member)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 7, Section 15, Section 18, Section 36, Section 60(5), Section 65(1).

Brief Background

The appellant in the present case is the corporate debtor who had filed this appeal against the order of the NCLT wherein the Tribunal had rejected the application of the applicant holding that, security interest does not include the performance guarantee, and the IBC does not cover ancillary activities to the performance guarantee. In the present case, application was filed under Sec. 7 of the IBC, which was admitted by the Tribunal on May 30, 2019. Pursuant to the public announcement inviting claims, it was incumbent upon the creditors to file their claims with the IRP, but no claim was filed by the respondent(s) before the IRP. Further, the corporate debtor was maintaining Fixed Deposit Receipts (hereinafter FDR) with the respondents, and they were supposed to release the said FDR amounts, but they had failed to do so.

The appellant contented that these FDRs were created by the corporate debtor's former management and were utilised as margin money prior to the beginning of CIRP. They argued that the authorised resolution plan provided for the extinguishment of all obligations other than those addressed under the resolution plan. As a result, the FDRs, which were the property of the corporate debtor, were released to the possession of the appellant under the provisions of the settlement plan. They claimed that the AA had failed to consider the liability which the Bank Guarantees in question aim to cover has been extinguished by virtue of law.

Issue

Whether the assets held under Trust can be considered as the asset of the corporate debtor under Sec. 36(4) of IBC?

Decision

The Tribunal dismissed the Appeal and held that there is no illegality in the impugned order and affirmed the order passed by the NCLT. The Tribunal declared that this is not a simple fixed deposit; it is a bank guarantee combined with margin money, and it is an independent contract between the beneficiary and the bank. Although these are shown as FDRs issued by SBI in favour of the beneficiary, they are not refundable to the corporate debtor unless the Bank is discharged.

They cited the judgement of *Ansal Engineering Projects Ltd.* v. *Tehri Hydro Development Corpn. Ltd*[19]. and held that margin money is construed as substratum of a trust created to pay to the beneficiary to whom the bank guarantee is given and cannot be treated as an asset of the corporate debtor. Thus, the Tribunal upheld the judgment of the NCLT and held that as per Sec. 36(4) of the IBC, assets held in Trust cannot be treated as assets of the corporate debtor.

Comments

This judgement has emphasized the Company Law doctrine of "separate legal entity". It is clearly held that a trust and a company no matter how much they are related and how much a trust and a company is connected in any manner, it is incumbent that the two entities are independent or in other words they are two different entities to adjudicate upon following the doctrine of separate legal entity. Although there were enough grounds in the present case to make the FDRs as part of the holding of the company, allowing this would have affected the entire group of companies. Thus, the Tribunal keeping in mind the very first principle of Company Law of separate legal entity dismissed the Appeal and held that the assets of a Trust cannot be considered as the asset of the corporate debtor under Sec. 36(4) of IBC. Adding to this, the Tribunal by dismissing the present Appeal has paved the way for individual insolvency and individual company to be treated separately from their parent company or Trust as held in the present case.

"ANUBHAV SINGH

[19] *1996 (5) SCC 450*

Any dues after the moratorium period has ceased will have to be paid by the corporate debtor.

DAMODAR VALLEY CORPORATION v. COSMIC FERRO ALLOYS LIMITED

Court	National Company Law Appellate Tribunal, Delhi
Judgement Dated	October 01, 2021
Bench	Justice Jarat Kumar Jain
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 7, Section 30, Section 31.

Brief Background

The appeal was filed by the appellant after being aggrieved by the order of the AA. CIRP was initiated against the corporate debtor Cosmic Ferro Alloys Limited on an application filed by Citibank N.A. under Sec. 7 of IBC. The appellant Damodar Valley Corporation (hereinafter DVC) is the operational creditor who used to supply power to the corporate debtor. The appellant alleged that the corporate debtor was in huge arrears in payment of electricity dues and delay payment charges. A disconnection notice was given by DVC to the corporate debtor and subsequently, its power supply was disconnected. DVC had also claimed that when the electricity supply was disconnected it was not aware of the initiation of CIRP against the corporate debtor.

Later, a letter was given by the corporate debtor to DVC for reconnection with promise to pay arrears of electricity dues in instalments as approved in the resolution plan. The resolution plan was approved by the CoC and later by the AA. The successful resolution applicant (hereinafter SRA), which had stepped in the role of the corporate debtor, requested an increase in the contract demand from 10 MVA to 20 MVA and asked for reconnection of electricity supply with waiver of security deposit. In response, DVC had sought a security deposit of Rs.6.43 crores for increasing the contract demand. Later, the corporate debtor sought revision of contract demand via different letters over next five years without any security deposit and agreed to clear all the dues to DVC.

DVC had disconnected electricity supply to the corporate debtor after giving notice of disconnection as no security deposit was forthcoming from the corporate debtor. DVC had also submitted that electricity supply to the corporate debtor is governed by Power Purchase Agreement entered into between the corporate debtor and the operational creditor.

The AA approved the resolution plan under Sec. 31(1) of IBC. The plan provided for repayment of debts of the operational creditor. But there is no specific or explicit approval of the waivers requested by the SRA of various charges including Security Deposit charges.

Issue

Whether the dues relating to electricity supplied after the moratorium has ceased will have to be paid by the corporate debtor?

Decision

The NCLAT quashed the order of the AA and held that there were no specific orders by the AA regarding waiver of security deposit for 5 years for increase in the contract demand and supply of power at an enhanced voltage. Thus, these requests only remained as proposals which had not been accepted or approved by specific order of the AA while approving the resolution plan. Therefore, in the absence of any specific orders, the appellant was not obliged to grant any waiver of payment of security deposit over the next five years for increase in contract demand or supply of electricity. Additionally, the NCLAT was of the view that any statutory or legitimate dues which might be demanded from the SRA for supply of any services should be paid by the SRA. Further, it noted that no waiver for any period of time for the future was permissible. The Tribunal concluded that any dues relating to electricity supplied after the moratorium has ceased will have to be paid by the corporate debtor.

Comments

The NCLAT has rightly passed the decision in favour of the operational creditor since there was no clause in the resolution plan which specifically talked about the waiver. It is a well settled position that every debt which is approved under the resolution plan has to be paid by the corporate debtor once the plan gets approved by the AA.

"MONIKA SAINI

An appeal by an operational creditor can only be considered when it has followed the directions given by the AA

RNY HEALTHCARE SERVICES PVT. LTD. v. BOURN HALL INTERNATIONAL INDIA PVT. LTD & ORS.

Court	National Company Law Appellate Tribunal
Judgement Dated	October 21, 2021
Bench	Justice Anant Bijay Singh, Member (Judicial) & Ms. Shreesha Merla, Member (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 – Section 10(3)(c).

Brief Background

The present appeal was filed by the appellant (RNY Healthcare Services Pvt. Ltd., the operational creditor) [hereinafter, appellant] against the respondent (Bourn Hall International India Pvt. Ltd.) [hereinafter, respondent] after the AA passed a judgment in favour of the respondent and accepted the application under Sec. 10 of the IBC filed by the respondent. Further, the AA had also rejected the Intervenor Application filed by the appellant.

The appellant was the respondent's landlord. The appellant is an operational creditor due to the outstanding lease rent by the respondent. The appellant held an arbitral award dated February 06, 2019 for a total sum of Rs. 3,48,41,071/- against the respondent for unpaid rent. The respondent is the wholly owned subsidiary of a foreign company called M/s TVM Capital Healthcare Partners Ltd. All the finances of the respondent were managed by the parent company.

The appellant contended that it had appealed since the application filed by the respondent under Sec. 10 of the IBC was made with the intent to defeat the upcoming arbitral award. However, the AA had admitted the respondent's application. It was also contended that Sec. 10 application filed by the respondent was incomplete since it didn't fulfil the requirement of a 'special resolution' under Sec. 10(3)(c) of the IBC. The Appellant had placed reliance on *M/s Neesa Infrastructure Limited* v. *State Bank of India*[20] According to the appellant, the respondent never conducted an 'Extra-Ordinary General Meeting' [hereinafter, "EOGM"] on October 31, 2018 at 1 pm, as the premise (rented to the respondent) was in the possession of the appellant. It had also pointed out that the AA had earlier noted that no EOGM attendance sheet was produced by the respondent. The appellant had also contended that the respondent had the financial ability to pay off the unpaid rent through its parent company.

The respondent had noted that the appellant had filed an execution petition against it for the arbitral award passed in the appellant's favour. The arbitral award was passed after the filing of the application under Sec. 10 of the IBC. Therefore, the respondent had contended that the execution petition was filed by the appellant to defeat the lawful claims of the various creditors.

Issue

Can an appeal by an operational creditor based on non-fulfilment of Sec. 10(3)(c), be considered if the operational creditor ignores explicit instructions of the AA?

Decision

The appeal was dismissed and the judgment by the AA was affirmed. It was noted that there was no merit in the appeal and there was no illegality in the impugned judgment. The Court observed that the AA had noted earlier that the appellant had not provided any proof for its claim of 'no meeting of shareholders being conducted on October 31, 2018'. Therefore, the respondent had met the requirement under Sec. 10(3)(c) of the IBC.

It was also observed that the AA had dismissed the Intervenor Application filed by the appellant and directed the appellant to file a claim before the IRP. This claim was to be based on the arbitral award which was in favour of the Appellant. However, this wasn't done by the appellant. Hence, the Tribunal dismissed the appeal observing that the appellant had not followed the directions issued to it.

Comments

The case merely reaffirms the procedural framework of the IBC where if insolvency is triggered, any creditor has to submit a claim with the IRP. Furthermore, after a Sec. 10 application has been accepted, the creditor has to submit its claim to the IRP, as was directed in this case by the AA.

"SHUBHAM DHAMNASKAR

[20] *(Company Appeal (AT) (Insolvency) No. 946 of 2020*

If an effective and alternate remedy is available under Section 12 A, withdrawal of application under Rule 11 would not be permitted

HARISH RAGHAVJI PATIL v. SHAPOORJI PALLONJI FINANCE PRIVATE LIMITED

Court	National Company Law Appellate Tribunal, New Delhi
Judgement Dated	October 6, 2021
Bench	Justice Jarat Kumar Jain, Member (Judicial), Dr. Alok Srivastava, Member (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 7, Section 12A; Rule 11 of NCLAT Rules, 2016

Brief Background

In the given case, a settlement was reached between the creditor and the corporate debtor before the constitution of the CoC. Hence, the corporate debtor filed an I.A. to place on record the settlement agreement and petitioned the Court to quash the CIRP proceedings against the corporate debtor on account of the settlement.

Issue

Whether under Rule 11, NCLAT can quash the CIRP proceeding because of a settlement reached between the creditor and the corporate debtor before the constitution of the CoC?

Decision

The NCLAT refused to entertain the I.A. and dismissed it. Citing *Swiss Ribbons* v. *UoI* [21] the NCLAT stated, it had discretion in allowing and exercising its power under Rule 11. It reproduced Para 82 the judgement which states, "*We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case*."

Furthermore, it differentiated the judgment of *Brilliant Alloys Pvt. Ltd.* v. *S. Rajagopal & Ors*[22]. on grounds that the facts of the case were different. It also differentiated *Kamal K Singh* v. *Dinesh Gupta*[23] stating that the judgment was based on facts and did not provide any ratio with regards to the "*Appellate Tribunal exercising its inherent power under Rule 11 of NCLAT Rules and entertaining the Application for withdrawal of Petition on the ground that the matter has been settled between the parties.*" Hence, interpreting *Swiss Ribbons*, NCLAT held it had the discretion to allow for approval or withdrawal of application on account of settlementbetween the parties before the formation of the CoC.

In the given case, the NCLAT set out the criteria to allow for applications to be withdrawn under Rule 11. It held "*that inherent power can be exercised only when no other remedy is available to the litigant and nowhere a specific remedy is provided by the statute. If an effective alternative remedy is available, inherent power will not be exercised, especially when the applicant may not have availed of that remedy. It is also settled law that inherent power cannot be invoked which intends to by-pass the procedure prescribed. The procedure prescribed under the law is to be followed strictly*."
Hence, it set a stringent standard for allowing applications under Rule 11 and indicated its preference of the corporate debtor using the prescribed method provided under Sec. 12A of IBC read with Reg. 30A of the Regulations for withdrawal of the petition, noting that allowing withdrawal of the petition under Rule 11 in the current case would amount to an abuse of process.

Comments

In the given case, the NCLAT lays down the criteria to invoke Rule 11 in allowing for withdrawal of petitions in lieu of a settlement. This case lays down Section 12-A as the route for withdrawal of a petition and rejects the use of Rule 11. This lays down a more creditor centric approach where once the CIRP is triggered, the corporate debtor needs to satisfy the claims of all the creditors. This also indicates that the CIRP once triggered is not a right in personam but rather a right in rem.Hence, forthwith, regardless of a settlement between the corporate debtor and the creditor before the constitution of the CoC, the CoC will need to be constituted and satisfied, in order to withdraw the application under Section 12-A, which requires 90% of the CoC to vote in favour of the withdrawal.

"SRIRAM PRASAD

[21] *(2019) 4 SCC 17*

[22] Special Leave to Appeal (c) No (s). 31557/2018

[23] *Civil Appeal No. 4993 of 2021*

In absence of any approved resolution plan and period under IBC lapsing, liquidation is triggered

DINESH GUPTA v. VIKRAM BAJAJ LIQUIDATOR, M/S BEST FOODS LTD.

Court	National Company Law Appellate Tribunal, New Delhi
Judgement Dated	September 29, 2021
Bench	Mr. Justice M. Venugopal, Acting Chairperson, Mr. V.P. Singh, Member (Technical), Dr. Ashok Kumar Mishra, Member (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 30, Section 31, Section 33.

Brief Background

The order of NCLT Chandigarh directing liquidation of the corporate debtor was appealed by one of the suspended Directors of the corporate debtor. During the CIRP, a Resolution Applicant (Maritime Trade Corporation), (hereinafter RA) had submitted a resolution plan which had certain defects and was not in compliance with IBC. Following some rectifications, the RA had submitted a new resolution plan which complied with IBC. In the ninth meeting of the CoC, members holding 43% of the share voted in favour of the plan while the State Bank of India (hereinafter SBI), having 54% of the voting share abstained due to 'pending approvals' from its 'higher ups' for 'voting' on the 'Resolution Plan'. Hence, the voting on the resolution plan was put off indefinitely. However, in the same meeting, all the creditors voted against the liquidation of the corporate debtor.

Over email communication with the RA, SBI had approved the resolution plan pending some changes and recommended the RA to submit a revised resolution plan. However, due to the changing economic situation brought upon by the COVID-19 pandemic, the RA had withdrawn from the process.

In light of no resolution plans being approved and the period under IBC lapsing, the NCLT had passed an order directing liquidation. This order was challenged by the appellant who claimed that the CoC had approved a resolution plan and as there is no provision under IBC for withdrawal of an approved resolution plan, NCLT erred in not enforcing the resolution plan and rather passing a liquidation order.

Issue

Can a resolution plan by the CoC be approved by informal communication to the Resolution Applicant?

Decision

In the given case, the NCLAT upheld NCLT's order and stated that there did not exist any approved resolution plan. The NCLAT held that the resolution plan was rejected by the CoC in the ninth meeting where SBI had abstained from voting on the resolution plan. Furthermore, the NCLAT held for a resolution plan to be approved, it needs to be put before the AA who would then check its feasibility and compliance with IBC under Sec. 30. The NCLAT also held that the email communication between SBI and the RA would not be construed as approval due to the facts of the case, where the email communication subjected approval to certain changes to which the RA did not respond positively to.

Hence, as the period of 270 days had elapsed and rather the matter had dragged on from February 02, 2018, the NCLAT upheld NCLT's order of liquidation under Sec. 33 as when the 'Liquidation Order' was passed on March 01, 2021, 1123 days from the date of commencement of insolvency (February 02, 2018) had passed. In upholding NCLT's order, the NCLAT suggested that the liquidator to "*explore the possibility of selling the Company/business as a 'going concern' mainly with a view to see the livelihood of workers employed in Company/business.*" This is mandated under the Liquidation Process Regulations, 2016.

Comments

The NCLAT finally put the matter to rest which had dragged on for more than 1123 days where there was no resolution plan which was approved, and hence liquidation was ordered. It is also pertinent to note while ordering Liquidation, in its ratio, NCLAT instructed the liquidator to explore the possibility of selling the company as a going concern, which shows the intention of IBC to try and find any alternative to liquidation till the last moment.

"SRIRAM PRASAD

If the financial creditor of a corporate debtor is a related party to the corporate debtor itself, the said financial creditor shall not get a seat on the CoC for that corporate debtor's CIRP

SAI PEACE AND PROSPERITY APARTMENT BUYERS ASSOCIATION v. ASK INVESTMENT MANAGERS PVT. LTD. & OTHERS

AND

V S SURESH v. ASK INVESTMENT MANAGERS PVT. LTD. & OTHERS

Court	National Company Law Appellate Tribunal, Principal Bench, New Delhi
Judgement Dated	September 20, 2021
Bench	Justice A.I.S. Cheema (Officiating Chairperson), V.P. Singh (Technical Member)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Sections 5(24)(m), 5(24)(i), 5(24)(h), Proviso to Section 21(2); Companies Act, 2013 - Section 2(6).

Brief Background

The two appeals were with regards to the same insolvency matter where the corporate debtor was one Ambojiini Property Developers Pvt. Ltd. and the dispute was with regards to whether one of the respondents, namely ASK Investment Managers, could be given a seat on the CoC as a financial creditor or not. In the first appeal, the appellant party was that of a homebuyers association which had taken units of property in the corporate debtor's projects and they were yet to receive possession of the same even after several delays. Therefore, the purpose of this association was a successful resolution of the corporate debtor through the CIRP. They were, however, alleging that ASK Investment Managers could not be made a part of the CoC even though they did qualify as financial creditors on the grounds of them being a related party. In Appeal No. 315 of 2020, the promoter of the corporate debtor is the appellant who supported ASK Investment Managers and claimed that they should get a seat at the CoC in order to be a part of the vote and discussion with regards to all processes of the CIRP.

The entire conundrum arises from a certain deal that took place between the entities involved. The deal was with regards to an associate company of the corporate debtors which the same promoter, V.S. Suresh was overlooking at the time. This entity was Real Value Promoters Pvt. Ltd. which, along with certain landowners, had floated a project in which certain investors had agreed to invest. These investors were investing through an investment vehicle managed by ASK Investment Managers and the vehicle was named "ASK PMS Real Estate Special Opportunities Portfolio." A subscription and shareholder's agreement was entered into between the two entities on March 23, 2013. According to these instruments, it was agreed that the investors, through ASK Investment Managers, would invest Rs. 50 Lacs in the form of equity and a sum of Rs. 49.5 Crores would be invested by way of debentures. The terms stated that these investors would nominate three directors, which would constitute 50% of the Board of Directors. By way of this, it was said that a lot of control with regards to Real Value Promoters would rest with the investors and the investors would be managed by ASK Investment Managers and therefore would classify as a related party. The NCLT had passed orders where the AA had directed the RP to make ASK Investment Managers a member of the CoC with voting rights proportionate to its claim against the corporate debtor.

Issue

Whether ASK Investment Managers would classify as a related party and whether that would disqualify them from having a seat on the CoC by way of being a financial creditor?

Decision

The NCLAT took into consideration various sections of the IBC, 2016, namely Sec. 5(24) and Sec. 21, which discuss the standing of the law with regards to related parties and the way that a CoC must be constituted. It is clearly stated under Sec. 21 that no related party can have a seat on the CoC. The argument that they were only debentures which were still to be converted into equity in order to ascertain the influence was therefore rejected and the AA held that there was a substantial interest that ASK Investment Managers held in the corporate debtor and were also sharing profits arising from it. Consequently, they were held to be insiders and related parties and therefore the AA ruled that the NCLT order must be overturned and ASK Investment Managers would not be eligible to be a part of the CoC.

Comments

This is a decision in the right direction by the NCLAT since related parties cannot be involved in the decision making once the CIRP commences in order to keep the decisions of the CoC reasonable and sound. This allows

no manipulation from the side of the corporate debtor and helps in the proper restructuring of the corporate debtor without any outside interference.

"SHALIBHADRA DAGA

Transactions leading to evasion of service tax and Tds and origin is suspicious are fraudulent in nature

P R VENKATESH (PROMOTER) v. SRIPRIYA KUMAR & ORS.

And

DEEPAK PARASURAMAN & ANR. v. SRIPRIYA KUMAR & ANR.

Court	National Company Law Appellate Tribunal, Principal Bench, New Delhi
Judgement Dated	September 21, 2021
Bench	Justice Anant Bijay Singh Member (Judicial), Ms. Shreesha Merla Member (Technical)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 9, 43, Section 66, Section 60(5**).**

Brief Background

This Appeal had been filed by the appellant who was the promoter and Managing Director of Perfect International Fabricators Private Limited. Dissatisfied by the order passed by the NCLT, whereby the AA had allowed the appeal filed by the RP (Respondent No.1) under Sec. 43 and 66 read with 60(5) of the IBC, 2016. The AA had held that the impugned transfer of the funds to respondent 1 was for fraudulent purposes. Therefore, it was directed that respondent 2 and respondent 3 jointly and severally contribute Rs. 65 Lac to the corporate debtor within fifteen days.

The facts of the case are that the corporate debtor – Perfect International Fabricators Private Limited, represented by P R Venkatesh – appellant herein and Ingenium Advisory LLP had entered into contract whereby Ingenium Advisory LLP was required to arrange long term and working capital loan on behalf of the Perfect International Fabricators Private Limited for their business requirements. Ingenium was required to receive commission in a certain manner. A total amount of Rs. 65 lacs were transferred by Perfect International Fabricators Pvt. Ltd. to Ingenium Advisory LLP in three tranches on December 19, 2016, June 20, 2017 and March 31, 2018 in accordance with Contract No. 1 and Contract No. 2. The Perfect International Fabricators Pvt. Ltd. was admitted to CIRP proceedings pursuant to an application under Sec. 9 filed by an operational creditor – M/s Jotun India Pvt. Ltd which was admitted by the Ld. NCLT vide order dated April 29, 2019 and respondent No. 1 was appointed as the RP.

The RP had filed MA/987/2019 before the Ld. NCLT alleging that Perfect International Fabricators Pvt. Ltd. and Ingenium Advisory LLP are related parties and the transfer of payments by Perfect International Fabricators Pvt. Ltd. to Ingenium Advisory LLP within the look-back period (2 years before the date of admission of CIRP Proceedings) were preference and fraudulent. The RP had preferred an Application before the AA under Sec. 43 and 66 of the IBC. Thereafter, the AA had passed the impugned order resulting in this appeal.

Issue

Whether the impugned order dated February 01, 2020 passed by the AA in MA/987/2019 in IBA/330/2019 is valid?

Decision

The Appellate Tribunal after taking into consideration all the above facts and provisions of the law upheld the AA's order. The AA in the order had stated that the impugned transfer of corporate debtor's funds to respondent 1 was fraudulent and the corporate debtor had been defrauded of Rs. 65 lacs as there was no Invoice, no GST/Service Tax nor any deduction of TDS when payment was made by the corporate debtor. Respondent 1 had not proven that this money had come to his partnership firm for commission. For those reasons, AA had termed the transactions fraudulent. As a result, respondents 2 and 3 were ordered to contribute Rs. 65 Lac to the corporate debtor jointly and severally.

The Appellate Tribunal, thus, affirmed the impugned order passed by the AA and stated that there was no merit in the instant Appeal. The instant Appeal was dismissed.

Comments

The judgement applies the settled law of excluding fraudulent transactions. The AA's order that was appealed was rightly upheld by NCLAT. The transactions which had taken place were of suspicious nature. The payment made to respondent no 2 and 3 was not justifiable and hence fraudulent. Also, the order established that transactions are preferential and fraudulent when there are suspicious circumstances around it such as evasion of TDS and service charge.

"SAMARTH GARG

Squaring off unsecured loans and selling of a car after initiation of CIRP constitute preferential and fraudulent transactions respectively.

PANDURANG RAMCHANDRA SHINDE v. VIJENDRA KUMAR JAIN

Court	National Company Law Appellate Tribunal Principal Bench, New Delhi
Judgement Dated	September 20, 2021
Bench	Justice A.I.S Cheema, Dr. Alok Shrivastava
Relevant Sections	Insolvency and Bankruptcy Code, 2016 - Section 7, Section 43, Section 44, Section 66, Section 67, Section 69, Section 70 and Section 74

Brief Background

The IDBI Bank Ltd. had filed a CIRP application against Cyclo Transmissions Ltd. under Sec. 7 of IBC on March 06, 2018 which was admitted on December 18, 2018. The RP, Vijendra Kumar Jain had filed applications under various sections of IBC (Secs. 43, 44, 66, 67, 69) alleging preferential transactions and fraudulent /wrongful trading. Upon the formation of the CoC, the appellant continued to hold the position of CEO of the corporate debtor in order to facilitate the continuation of the corporate debtor as a going concern.

But since there was no resolution plan, an application for liquidation of the corporate debtor was filed on November 05, 2019. In the CoC meeting dated November 14, 2019, the appellant was ousted from the position of CEO. Subsequently, on July 24, 2020 the RP had filed an application alleging the sale of a car by the appellant, after the commencement of CIRP, at an undervalue without taking permission from RP. Secondly, the RP had also alleged that appellant, being an unsecured creditor, had squared off the loan against three receivable entities of Rs. 62,31,924; Rs. 15,41,627/- and Rs. 13,83,627/- respectively. The RP had sought order declaring that squaring off the loan was a preferential transaction as under Sec. 43 of IBC. The AA had passed an order against the appellant by qualifying the transactions as preferential and fraudulent. The said order had been challenged in the present appeal.

Issue

i. Whether the principles of natural justice are violated if appellant has more than one Advocate and the video-conferencing link was not shared with the other Advocate?
ii. Whether squaring off receivables against debt constituted preferential transactions?
iii. Whether the sale of the car can be classified as a fraudulent transaction?

Decision

The Tribunal held that the principles of natural justice were not violated because the video-conferencing link could be easily shared by the appellant with their advocates. The appellant's luxury to appoint two Advocates on the same matter cannot be used as a ground to claim violation of principles of natural justice if one of their advocates did not appear.

With regard to the second issue, there were material on record, ledger accounts and general vouchers, indicating that the undisputed unsecured loan advanced by the appellant to the corporate debtor was squared off after the initiation of CIRP and therefore, the transactions fall within the purview of Sec. 43 of IBC.

In respect of the third issue, it was observed that the tax invoice placed on record was undisputed. While CIRP was initiated on December 18, 2019, the tax invoice was raised on December 30, 2019 during the moratorium. While examining the cost for which the car was sold, it was concluded that it was actually sold at INR 75,000 out of which INR 25,000 was paid in advance and INR 50,000 was on the tax invoice. Therefore, it was held that the appellant was not only liable for contravention of moratorium under Sec. 74 of IBC, but also for misconduct in the course of CIRP under Sec. 70 of IBC. Thus, the order passed by AA directing the appellant to pay the amount back was upheld and the appeal was disposed off.

Comments

When the CIRP process has been initiated, the existing management can remain in their positions if permitted by the IRP or RP as the case may be. As per Sec. 23(2) of IBC, the RP also exercises powers and performs duties that are vested in the IRP. Sec. 17 of IBC further stipulates that the officers and managers of the corporate debtor report to the IRP for providing access to required documents and records. Sec. 19 of IBC lays down that the personnel of the corporate debtor are mandated to extend cooperation to the IRP for the purpose of managing the company. Furthermore, Sec. 20 underscores the position that IRP and RP should make all endeavors and issue instructions to the personnel of the corporate debtor to keep it as a going concern. In the instant case, the CEO was allowed to be in the office to facilitate the management of the corporate debtor. Generally, there exists a possibility that the officers who have extended credit to the company may attempt to square it off due to lower rank in the waterfall mechanism under Sec. 53 of IBC. The CEO, being an unsecured creditor, tried to disrupt the order of priority

under the aforesaid section. Along with reversal of such transactions, penal action under Chapter VII was rightly taken by the NCLT in the present case.

"RENUKA NEVGI

NCLT PRONOUNCEMENTS

Doctors of the corporate debtor act as consultants; they cannot be deemed as workmen or employees of the corporate debtor

DR. MANJULA RAMACHANDRAN v. C.A. MAHALINGAM SURESH KUMAR, LIQUIDATOR OF RAIHAN HEALTHCARE PVT. LTD.

Court	National Company Law Tribunal, Kochi
Judgement Dated	October 10, 2021
Bench	Justice Rajesh Sharma, Member (Technical), and Dr. Ashok Kumar Mishra, Member (Judicial)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 – Section 3(36), Section 7, Section 40, Section 42, Section 53; Industrial Disputes Act, 1947 – Section 25F; Income Tax Act, 1961 – Section 194 (j).

Brief Background

The applicants were workmen of Raihan Healthcare Private Limited (corporate debtor), distressed by the decision of the liquidator informing them that their claims were partially admitted and the other claims were declined. An application was filed under Sec. 7 of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to AA) Rules, 2016, against the corporate debtor, before the NCLT by the Union Bank of India. Since no resolution plan was received during the CIRP period, NCLT had passed an order for liquidation of the corporate debtor and the respondent to the instant case, Mr. Mahalingam Suresh Kumar, was appointed as the liquidator. The appellants' contention was that the corporate debtor had stopped its functioning from November 01, 2019 without paying remuneration for the days they worked in the company. The company had halted its production abruptly in an illicit manner, without giving a mandatory notice and connected matters lock out under Sec. 22. As per Sec. 25F of the Industrial Disputes Act, 1947, no notice of sixty days for closure was given to the workmen and the government. The appellants had sought a relief to be classified under the category of workmen. Further, since the employees had quit the service prematurely, they claimed to be eligible for all the benefits. The respondent had filed a counter stating that since incorporation of the corporate debtor, the appellants were appointed as professionals and not as workmen.

Issue

Whether the appellants, being consultant doctors of the corporate debtor, come under the purview of 'workmen'?

Decision

The NCLT noted that the appellants did not produce the acknowledgement of Income Tax returns displaying their incomes and the tax paid by them during their association with the corporate debtor, so as to validate whether the appellants were remunerated and whether the tax deduction at source was made. Further, the appellants could not demonstrate that they were full-time employees of the corporate debtor. The NCLT scrutinised the appointment letters and determined that the appellants were appointed as consultant doctors for a fixed salary and they were acting in the capacity of consultants of the corporate debtor. Moreover, they were not registered under the corporate debtor's Employee Provident Fund Scheme and there was no agreement to demonstrate that the provident fund could be subtracted from their professional fees. Lastly, there was no employment contract between the appellants and the corporate debtor. A perusal of all these facts indicated that there was an evident distinction between the doctors who were employees and the doctors who acted as consultants. The appellants in this case were doctors of the corporate debtor acting as consultants. Hence, they cannot be deemed as workmen or employees of the corporate debtor. Bearing in mind the said findings, the NCLT found no infirmity in the impugned order passed by the liquidator and dismissed the appeals.

Comments

This is the correct position in law because there is a fundamental difference between an employee and a consultant wherein the latter's services are outsourced in nature and not of the effect that there's an employer-employee hire and fire relationship, created between the two of them. The NCLT has correctly recognized this utilizing the facts at hand. In the instant case, the doctors were not full-time employees, they were mere consultants. The rationale to ensure that employee dues are paid during liquidation, is that employees are dependent on their employer and by virtue of liquidation, they end up losing their job and a potential future source of income. So therefore, any outstanding amount that is to be paid to them is generally prioritized in the scheme of insolvency in India.

"MANISHA SARADE

Corporate Debtor can be exempted from compliances under SEBI (LODR) Regulations, 2015, if undergoing CIRP process

BOHRA INDUSTRIES LIMITED THROUGH ITS RESOLUTION PROFESSIONAL v. NATIONAL STOCK EXCHANGE OF INDIA LTD., THROUGH ITS SENIOR MANAGER

Court	National Company Law Tribunal, Jaipur Bench
Judgement Dated	October 13, 2021
Bench	Justice Mr. Ajay Kumar Vatsavayi (J), Mr. Raghu Nayyar (T)
Relevant Sections	Insolvency and Bankruptcy Code, 2016 – Section 14, Section 60(5); SEBI (LODR) Regulations, 2015 – Regulation 31

Brief Background

The corporate debtor – Bohra Industries Ltd. is undergoing CIRP but in spite of that, the respondent – National Stock Exchange of India Ltd. had levied fine on the corporate debtor for the delay in making certain compliances in terms of Reg. 7(3) of the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015. The RP through various letters had informed the respondent about the undergoing CIRP against the corporate debtor and imposition of moratorium under Sec. 14 of the IBC and the effect of the same on the requirements of various obligations by the corporate debtor. However, the respondent through its subsequent communications had insisted that the corporate debtor is liable to pay a fine of Rs.8,38,980 (inclusive of 18% GST).

On such account, the application was filed by the RP of the corporate debtor against the respondent under Sec. 14 read with Sec. 60(5) of IBC seeking to quash and set aside the letter dated June 23, 2020 of the respondent. In the submission by the applicant, RP through various letters addressed to the respondent, explained the legal position in respect of the corporate debtor against which the CIRP is going on. In spite of the same, the respondent failed to appreciate the same and insisted for payment of fine levied on the corporate debtor.

In response, the respondent did not agree with the submissions of the RP mainly on the ground that the non-compliance i.e. delay in submission of financial results was prior to the initiation of CIRP and as on the relevant period, the Board was very much in power. As per the Reg. 31 of SEBI (LODR) Regulations, 2015, every listed entity is required to submit shareholding pattern within 21 days from end of the quarter and there was no exemption to the corporate debtor even though the corporate debtor was under CIRP process. Same reasoning was given by the respondent for non-compliance with regard to the prior intimation of the Board meeting for considering the financial results.

Issue

Whether there is an exemption of compliances under SEBI (LODR) Regulations, 2015 to the corporate debtor undergoing CIRP process?

Decision

The Tribunal in its reasoning stated that, in view of the fact of making certain compliances subsequently and that the RP is facing certain reasonable impediments with regard to certain other compliances, the impugned order (letter) of respondent is unsustainable. Unnecessary burdening the corporate debtor with imposition of fines is against the interest of the corporate debtor and also against the objective of the IBC. Taking into consideration the circumstances and the above reasons, the Tribunal condoned the imposition of fine on the corporate debtor for delay in making the subject compliances. However, it added that either the RP, if the impediments are removed or the successful resolution applicant, if the resolution plan is approved, shall act in accordance with law in complying with the required compliances.

Comments

This judgment is a rather good judgement in law. It has taken into consideration the main objective of the IBC, which is the revival of the corporate debtor and, the purpose of moratorium, which is imposed to safeguard the interests of the corporate debtor and maximise its value. So, the judgement is at par with the framework of the IBC. Additionally, the Tribunal has rightly taken into consideration the importance of complying with those compliances by ordering the RP or the successful resolution applicant to comply with the same.

"ANUSHKA FUKE

CIFL NEWSLETTER

MAHARASHTRA NATIONAL LAW UNIVERSITY MUMBAI

© Centre for Insolvency and Financial Laws
MAHARASHTRA NATIONAL LAW UNIVERSITY MUMBAI
[Established under the Maharashtra Act VI of 2014]
Post Box No: 8401
Adderss: Powai, Mumbai – 400 076
Tel: 022-25703187, 022-25703188
Email: nlumumbai@mnlumumbai.edu.in
Website: http://mnlumumbai.edu.in/index.php