

Indian Institute of Insolvency Professionals of ICAI (IIPI)

(Company formed by ICAI as per Section 8 of the Companies Act 2013)

IIPI Update -#2 - Part II

May 2017

CASE UPDATES

Cases Admitted

Bench	National Company Law Tribunal (NCLT), Ahmedabad Bench, Ahmedabad
Financial Creditor	Hero FinCorp Ltd.
Corporate Debtor	Steel Konnect (India) Pvt. Ltd.
Amount of Default	6.63 Cr.
Date of Order	19-04-2017
Relevant Section	Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016- Initiation of corporate Insolvency resolution process by Financial Creditor
Facts of the Case	On the basis of Master Facility Agreement entered between the Financial Creditor and the Corporate Debtor a loan amounting to Rs. 7 Cr. was advanced. As per the agreed terms, instalments were required to be paid through ECS by way of Equated Monthly Instalments. The Corporate Debtor defaulted in making instalments and from November 2016 it had completely stopped making payments. The Corporate Debtor disputed that the claimed amount was not correct but could not deny the default or the Loan Agreement.
Decision of the Tribunal	From the material placed on record, this Adjudicating Authority is satisfied that a default has been committed by the Corporate Debtor in repayment of the loan amount. The petition was therefore admitted and Interim Resolution Professional was appointed.

Bench	National Company Law Tribunal (NCLT), Principal Bench, New Delhi
Operational Creditor	Prideco Commercial Projects Pvt. Ltd.
Corporate Debtor	Era Infra Engineering Ltd.
Amount of Default	68.23 lakh
Date of Order	12-04-2017
Relevant Section	Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Limitation Act, 1963- Application for initiation of corporate Insolvency resolution process by operational creditor
Facts of the Case	<p>The Operational Creditor has completed the project as per work orders issued in 2009 by the Corporate Debtor. The Corporate Debtor had issued seven post-dated cheques in 2014 as a full and final settlement out of which only one cheque was honoured.</p> <p>On the issue whether the claim of the petitioner is covered by the period of limitation as provided by the Limitation Act, 1963 the petitioner submitted that the issuance of post-dated cheques and its non-payment would give a fresh lease of limitation period.</p>
Decision of the Tribunal	<p>The Tribunal after going through the documents submitted by the Operational Creditor held that the requirements of section 9 of the Code are substantially fulfilled. The liability to pay has also not been disputed in view of the facts that the Operational Creditor had received seven post-dated cheques in lieu of full and final settlement dated 21-01-2014.</p> <p>As regard to the issue of limitation the Tribunal held that the claim is within the period of limitation of three years as the earliest cheque dishonoured was dated 15-03-2014 and the present petition was filed on 01-03-2017. The Tribunal also persuaded to take the view that issuance of a cheque amounts acknowledging the liability to pay as per the Division Bench judgment of Kerala High Court in the case of Ramakrishnan v. Parthasatadhy, 2003 (2) KLT 613. The Tribunal therefore admitted the Petition and appointed the Insolvency Resolution Professional.</p>

Bench	National Company Law Tribunal (NCLT), Mumbai Bench, Mumbai
Operational Creditor	Ashok Alco-Chem Ltd (Applicant)
Corporate Debtor	Unimark Remedies Ltd.
Amount of Default	61.36 lakh
Date of Order	04-04-2017

Relevant Section	Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 – Application for initiation of corporate Insolvency resolution process by operational creditor
Facts of the Case	<p>Insolvency resolution process under section 9 of the Code was initiated on the ground of non-payment of debt owed to Operational Creditor. The petitioner had given statutory notice under section 433 and 434 of the Companies Act, 1956 and filed winding up petition before High Court. The debtor company raised an objection that notice under section 8 of the code was not issued before filing the petition.</p> <p>The NCLT vide its order dated 24-02-2017 held that the debtor company could not raise such objection as this petition happens to be transferred from High Court by virtue of jurisdictional change. The Tribunal further held that the petitioner has complied all statutory compliances and thus no dispute is in existence between the financial creditor and the corporate debtor in relation to the debt claim and admitted the petition and appointed the Insolvency Resolution Professional.</p> <p>The corporate debtor filed an application for recalling/review the order dated 24-02-2017 on the grounds that dispute between the parties has been resolved and that the application has been filed before the order has been communicated.</p>
Decision of the Tribunal	<p>When orders are passed in open court on the date of hearing after notice has been issued to the corporate debtor, such order cannot be called ex-parte order, that apart, it is not that this bench should not pass orders unless corporate debtor appears.</p> <p>Further this matter has been transferred from the Hon'ble High Court on the basis of the notification dated 7th December 2016. On perusal of this notification dated 7-12-2016, it is understood that all applications that have been transferred under this notification have to be treated as application u/s 7, 9 or 10 of the Code. Therefore, issuing another notice u/s 8 of the Code in the transferred case is not necessary, because the precondition of the issuing notice u/s 8 will not apply. Further there is neither a section of law envisaged to recall its own orders, nor a Rule set out to recall orders, and moreover the moratorium being rem in nature, this application is hereby dismissed in limine as not maintainable.</p>

Bench	National Company Law Tribunal (NCLT), Mumbai Bench, Mumbai
Operational Creditor	Sanjaya Kumar Ruia
Corporate Debtor	Magna Opus Hospitality Pvt. Ltd.
Amount of Default	40.73 lakh
Date of Order	12-04-2017
Relevant Section	Section 9 read with Section 8 & 5(21) of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 – Application for initiation of corporate Insolvency resolution process by Operational Creditor
Facts of the Case	The Operational Creditor, a Chartered Accountant had provided professional services as well as Advisory Services to the Corporate Debtor. The Corporate Debtor defaulted in payment of professional services as well as of Advisory service charges to the Operational Creditor. In his support the petitioner submitted documents that he had audited the accounts of the Debtor Company and also a letter issued by the Debtor Company assigning Advisory Services.
Decision of the Tribunal	<p>Whether the 'Professional Services' shall fall under the definition of 'Operational Debt' as defined u/s 5(21) of the Insolvency and Bankruptcy Code?</p> <p>The term "Services" used in the definition of 5(21) has not been defined under this Code. However the expression "Services" as per Black Law Dictionary is "the act of doing something useful for a person or company, usually for a fees". Another meaning as per the Dictionary is, "an intangible commodity in the form of human effort, such as labour, skill or advises". Likewise, meaning of "Service Charge" as per the Dictionary is a charge accessed for performing a service. The Tribunal therefore held that a Professional Service provided by a Chartered Accountant definitely fall under the expression "Services" as incorporated in the definitions of "Operational Debt" u/s 5 (21) of the Code.</p> <p>In the light of documents submitted by the petitioner the Tribunal held that there is an existence of "debt" as defined u/s 3 (11) of the Code and a "default" exists as defined u/s 3(12) of the Code. Once it is established that there was an existence of "Default" then the provisions of Section 8 of the Code shall come into operation. Although in sub-section 8(2) of the section a Corporate Debtor is authorised to establish the existence of a dispute within 10 days on the receipt of the Demand Notice, but in the present case the "Operational Debtor" had not responded at all. The Tribunal therefore held that due to this reason the provision of section 9 of the Code shall come into operation. Accordingly the petition was allowed and the interim resolution professional was appointed.</p>

Hope you find this Update helpful.

Suggestions if any, may be mailed to ipa@icai.in