

Indian Institute of Insolvency Professionals of ICAI (IIPI)

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

IIPI Update -# 3 - Part II

May 2017

CASE UPDATES

Bench	National Company Law Tribunal (NCLT), Principal Bench, New Delhi
Financial Creditor	Punjab National Bank & others
Corporate Debtor	Unigreen Global Pvt. Ltd. (Applicant)
Amount of Default	Rs. 100 Crore
Date of Order	08-05-2017
Relevant Section	Section 10 read with Section 65 of the Insolvency and Bankruptcy Code, 2016 – Initiation of Corporate Insolvency Resolution Process by Corporate applicant
Facts of the Case	The applicant/corporate debtor company filed this application to initiate Corporate Insolvency Resolution process. In compliance to the provision of the Insolvency & Bankruptcy Code, 2016 (Code) it had furnished the details of the financial creditors and the operational creditors and also the list of immovable properties held securities by the financial creditors banks. As directed by the Tribunal the applicant served notice to the financial creditors. The application was objected by the lead financial creditor bank.
Decision of the Tribunal	<p>The provisions of IBC, 2016 has predominantly been brought into force for the re-organization and insolvency resolution of corporate persons and that too in a time bound manner for the maximization of value of assets of such persons to promote entrepreneurship and balance the interest of all stake holders involved in relation to the insolvent.</p> <p>The corporate debtor to disclose all the facts including in relation to the debts owed by it to its creditors as well as securities offered to the creditors as well as of assets of the corporate debtor. Since the process is self-initiated in so far as the corporate debtor is concerned, all the disclosures must be true and correct and must not be made solely to scour for any concession it may get in the process, including moratorium, with a view to deny the recovery of bona fide and lawful debt owed to its creditors, including financial and operational.</p> <p>The Bank in its objection held that the corporate debtor and directors also being guarantors are trying to avoid making lawful payments of the dues owed to the Bank and also thwarting the Bankers from realizing the securities by initiating several legal proceedings in different courts and Forums with the sole motive of removing their personal properties from the clutches of law and that the instant action before this Tribunal is yet another attempt in the same direction.</p> <p>Considering the contentions of both the parties the Tribunal held that once the instant petition by the Corporate Debtor is admitted, then the admission goes without saying will have a serious impact in relation to the objectors, namely, the financial creditors as whatever action which has culminated into taking physical possession of the secured assets will be automatically 'stayed' for a period of at least six months or even more depending upon the circumstances of the process and seems to be the motivation for the petitioner to approach this Tribunal under IBC, 2016 rather than put into to effect the avowed objects for which IBC, 2016 has been enacted. The Tribunal cannot be a party to such mala fide actions on the part of the corporate debtor and this is a clear case of abuse of process of law which should be discouraged at the threshold.</p> <p>Taking into above position and as the applicant have not come with clean hands the Tribunal dismissed the petition and with a view to discourage the parties from abusing the process of Code the Tribunal imposed a penalty of Rs. 10 Lacs toward costs as contemplated under section 65 of the Code.</p>

Bench	National Company Law Tribunal (NCLT), Chennai Bench, Chennai
Operational Creditor	M/s. Alcon Laboratories (India) Pvt. Ltd.
Corporate Debtor	M/s. Vasan Health Care Pvt. Ltd.
Amount of Default	Rs. 94.74 Crore
Date of Order	21-04-2017
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	The Corporate Creditor had supplied various products to the Corporate Debtor Company on credit basis in lieu of various agreements entered between them. The Corporate debtor used the products but defaulted in payments for some of the products. A milestone agreement was entered between the parties where the corporate debtor agreed to pay the pending amounts in instalments. A hypothecation agreement was also entered between the parties. However the corporate debtor even failed to pay the first instalment. On notice under section 8 the corporate debtor did neither bother to pay the outstanding amount nor reply the statutory notice.
Decision of the Tribunal	<p>The objections of the corporate debtor are answered by the Tribunal as under:</p> <p>1. Statutory notice was to be sent directly by the operational creditor.</p> <p>Tribunal: This objection is not sustainable for the reason that Form-3 itself provides for the signature of the persons authorized to act on behalf of the operational creditor. Therefore, the operational creditor can authorize any person to send the statutory notice on its behalf.</p>

Decision of the Tribunal	<p>2. Application not being in the Form prescribed.</p> <p>Tribunal: It is seen that all the information required are contained in the application filed under section 9 of IBC, 2016. Therefore, this objection is also not sustainable.</p> <p>Following the decision of Bombay High Court in Pramod Prabhakar Kulkani Vs. Balasaheb Desai Sahakari Sakhar Karkhana Ltd, (2001) III LLJ 741 Bom. the Tribunal held that the 'Forms' for notice and application as prescribed under the Rules are for providing/incorporating necessary information, which are required under the law. Thus, the substance is more important than the 'Form' and moreover there is no irregularity in the statutory notice sent and the application filed.</p> <p>3. The operational creditor are still under the ownership as per hypothecation agreement.</p> <p>Tribunal: It is a normal business practice being followed that unless the entire payment/consideration is paid by the buyer, the sellers will have lien over the goods supplied, but that does not mean that the corporate debtor is not under obligation to make the payment for the supply of the goods to the supplier.</p> <p>4. The 'operational creditors' does not fall within the definition of the 'operational debt' as defined under sub-section 21 of Section 5 of the Code.</p> <p>Tribunal: Corporate debtor is misleading because the word "goods" used in the definition is of wider import and includes the machinery/equipment. Further it is on record that more than half of the outstanding amount is pertaining to the consumables supplied by the operational creditor. The objection raised by the corporate debtor is not tenable in the eye of law and therefore, stands rejected.</p> <p>5. The milestone agreement provides for resolving the disputes through negotiations, failing which by arbitration.</p> <p>Tribunal: This does not bar the operational creditor to file the application under section 9 of the Code against the corporate debtor as the Code does not envisage such a kind of bar for initiating the corporate insolvency resolution process by the operational creditor.</p> <p>6. Winding up petition is sub judice before the Hon'ble High Court.</p> <p>Tribunal: The pendency of the winding up petition cannot be a bar under the Code for initiating the corporate insolvency resolution process, because the Hon'ble High Court has not passed any order for winding up of the corporate debtor and no Official Liquidator has been appointed. Therefore, this objection is also rejected.</p> <p>On facts, the Tribunal held that it is also an admitted fact that the outstanding amount payable by the corporate debtor to the operational creditor is not under 'dispute'. Since all the requirements under law have been fulfilled in the instant case allowed the application of the operational creditor and ordered the commencement of the corporate insolvency resolution process.</p>
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Bench	National Company Law Tribunal (NCLT), Allahabad Bench, Allahabad
Financial Creditor	Union Bank of India
Corporate Debtor	Raman Ispat Pvt. Ltd. (Applicant)
Amount of Default	9.48 Crore
Date of Order	11-04-2017
Relevant Section	Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 – Initiation of corporate Insolvency resolution process by Corporate applicant
Facts of the Case	The applicant/corporate debtor failed to pay an amount of Rs. 9.48 crore to the Bank and has mortgaged its assets as security. The Bank has issued notice under SARFAESI Act for taking possession of the mortgaged property. Hence, applicant company filed this application for insolvency resolution process.
Decision of the Tribunal	Corporate Debtor has complied with the provision of section 10 of the Code and therefore the petition deserved to be allowed. The Tribunal declared moratorium with consequential directions and appointed interim resolution professional.

Bench	National Company Law Tribunal (NCLT), Kolkata Bench, Kolkata
Operational Creditor	Parker Hannifin India Pvt. Ltd. (Applicant)
Corporate Debtor	Prowess International (P) Ltd.
Amount of Default	45.73 Lakh
Date of Order	20-04-2017
Relevant Section	Section 8 read with section 9 of the Insolvency and Bankruptcy Code, 2016 –Insolvency resolution by Operational Creditor
Facts of the Case	The applicant Operational Creditor in response to the purchase order issued by the Corporate Debtor manufactured and supplied certain materials. An amount of Rs. 45.73 Lakh was still due out of invoices raised for the amount Rs. 73.73 Lakhs. According to the Operational Creditor the purchase order alongwith the invoices constituted a legal, valid and binding contract between it and Corporate Debtor.
Decision of the Tribunal	It appears from the record that all the documents filed by the applicant. It is clear that the Corporate Debtor has committed default for not making payments of debt. The Tribunal therefore admitted the Petition and appointed the Insolvency Resolution Professional.

Hope you find this Update helpful.
Suggestions if any, may be mailed to ipa@icai.in