

Case Snippets

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K. Sashidhar vs Indian Overseas Bank & Ors [Supreme Court] [5th February, 2019]

The Supreme Court has made the following observations:

- 1) The legislature, while enacting the Code, has consciously ensured that no ground is available to question the 'commercial wisdom' of the individual financial creditors or the collective decision of the CoC before the NCLT in approving or rejecting a resolution plan and such commercial considerations are outside the scope of judicial review.
- 2) If the CoC were to reject a resolution plan for any of the grounds mentioned under Section 30(2) of the Code, including a decision on the eligibility of a resolution applicant under Section 29A of the Code, the said decision would be subject to judicial review.
- 3) The amendment to Section 30 (4) of the Code in June 2018, which introduced the requirement for the CoC to consider the feasibility and viability of a resolution plan before approval, is a mere restatement of the factors that the CoC is expected to take into consideration in any event whilst considering a resolution plan.
- 4) The amendments to the Code reducing the voting percentage for approval of a resolution plan from 75% to 66%, as well as the requirement to record reasons for approval or rejection of a plan by CoC are prospective and the decisions already taken by the CoC prior to the amendment cannot be undone.



Excel Metal Processors Ltd vs. Benteler Trading International GMBH & Anr. [NCLAT] [21st August 2019]

NCLT Mumbai bench admitted application under section 9 of IBC. The Appellant/Corporate debtor challenged the admission order before NCLAT on that there was an agreement reached between the parties which state that any suit or case is maintainable against the company only in the court at Germany and thus no case can be filed in any court in India and thus NCLT, Mumbai Bench has no jurisdiction to entertain the Application.

While adjudicating the appeal, the NCLAT referred to the order passed in the case “Binani Industries Limited vs. Bank of Baroda and Anr.” [CA (AT) (Insolvency) No. 82-2018] wherein it was observed that “ ‘Corporate Insolvency Resolution Process’/ insolvency proceedings is not a ‘suit’ or a ‘litigation’ or a ‘money claim’ for any litigation; No one is selling or buying the ‘Corporate Debtor’ a ‘Resolution Plan’; It is not an auction; it is not a recovery, which is an individual effort by the creditor to recover the dues through a process that had debtor and creditor on opposite sides; and it is not liquidation. The object is merely to get resolution brought about, so that the Company do not default on dues.”

In pursuance to Section 408 of the Companies Act, 2013, the Central Government has notified and vested the power on respective NCLTs to deal with the matter within its territory, where the registered Offices of the Companies are situated. The Hon’ble Tribunal, while holding that “the National Company Law Tribunal, Mumbai Bench has the jurisdiction to entertain an application under Section 9 of the I&B Code and the Appellant cannot derive advantage of the terms of the Agreement reached between the parties”, dismissed the appeal.

