



Volume 04, Number 02 (January 14, 2021)

Mohit Minerals Ltd Vs. Nidhi Impotrade Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 905 of 2020 (NCLAT) Date of Order: 08th January 2021

Demand notice delivered by an Advocate duly instructed by the Operational Creditor would be a valid demand notice for initiation of CIRP.

Facts of the case: -

The Operational Creditor (Appellant) had filed an application under Section 9 of IBC before the NCLT, Ahmedabad. The said application was dismissed by the AA by holding the application not maintainable because the demand notice for initiation of CIRP was issued by Advocate without any authority. The appellant challenged the order of AA in NCLAT.

NCLAT observations: -

The NCLAT observed that the delivery of notice is to be effected in the prescribed form which must emanate from the Operational Creditor or any authorized person on its behalf. Relying on the pronouncement of Supreme Court in "*Macquaire Bank Limited v. Shilpi Cable Technologies Limited- [(2018) 2 SCC 674]*" wherein it was held that a demand notice delivered by an Advocate duly instructed by the Operational Creditor would be a valid demand notice for purposes of initiation of CIRP. Hence in view of the same, notice delivered could not be held to be bad in law unless it was shown that the lawyer was not duly instructed.

Further, from the facts the NCLAT observed that the AA was aware of the legal proposition but in the opinion of the AA there was no due authorization backed by Board Resolution of the Operational Creditor. NCLAT opined that this view was unsustainable as in case of a person other than an Advocate, the Board Resolution would be required but in the event of a demand notice being issued by an Advocate duly instructed by his client (Operational Creditor), there is no need of requirement of authority being backed by the Board Resolution.

Hence the NCLAT set aside the order of AA and remitted the matter back.



IFCI Ltd & Ors. Vs & M/s BS Ltd
IA No. 1148/2020 in CP (IB) No. 278/7/HDB/2018 (NCLT)
Date of Order: 07th January 2021

Once liquidation process is initiated, the erstwhile CoC members have no role to play and they cannot move any application for removal of Liquidator, nor there exit provisions under law to remove the Liquidator. The Liquidator is at liberty to conduct the liquidation process strictly in accordance with the IBC.

Facts of the case:-

The IRP was confirmed as RP and subsequently appointed as Liquidator. However, during the process of liquidation, the applicants (erstwhile members of CoC) filed an application with a prayer to replace the Liquidator on the ground that he failed to perform his duties as per the law and engaged in illegal activities. The question arises before the NCLT with respect to the process of removal of Liquidator on an application made by Financial Creditor (s)/Member(s) of erstwhile CoC.

NCLT Observation: -

The NCLT referred to section 34(4) and 34(7) IBC, which deals with replacement of RP in three situations as enumerated in clause (a), (b) and (c) of section 34(4) and power of NCLT to appoint IP as Liquidator, respectively. Neither Section 34(4) nor section 34(7) deals with the replacement or removal of Liquidator at the instance of Creditors/claimants. Therefore, the NCLT observed that under IBC there is no legal provision related to replacement or removal of the Liquidator.

Further, the NCLT also relied on the judgment of PNB Vs. Mr Kiran Shah, Liquidator of ORG Informatics Ltd [Company Appeal (AT) 102 of 2020; dated 21.01.2020] where the NCLAT categorically held that after the Liquidation process is initiated, the erstwhile CoC members have no role to play and they remain simply a group of claimants, whose claims are to be determined by Liquidator and they cannot move any application for removal of Liquidator, since there are no such provisions under the law.

Case disposed.

