

## **Case Snippets**

### **Volume 2, Number 5 (December 11, 2019)**

#### **S3 Electricals and Electronics Private Limited Vs. Brian Lau & Anr. (5<sup>th</sup> August, 2019) (Supreme Court)**

On the matter getting settled between the parties, the NCLAT closed the proceedings and directed that AA shall fix the fee of IRP for the period he has worked and that shall be borne by the CD. While noting the provisions of Regulation 33 of the CIRP Regulations, the Supreme Court (SC) held:

“A bare reading of regulation 33(3) indicates that the applicant is to bear expenses incurred by the RP, which shall then be reimbursed by the Committee of Creditors to the extent such expenses are ratified. We are informed that, in this case, no Committee of Creditors was ever appointed as the interim resolution process did not reach that stage. In these circumstances, it is clear that whatever the Adjudicating Authority fixes as expenses will be borne by the creditor who moved the application.”



## Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors. (NCLAT) (4<sup>th</sup> July, 2019)

The promoter of Corporate Debtor (Bafna Pharmaceuticals Ltd), which is an MSME, submitted resolution plan which was approved by the Adjudicating Authority. The order of approval of resolution plan was challenged before the NCLAT on the ground that appellants were also interested to submit the resolution plan, and that the resolution plan was approved without complying with the provisions of the Code, as no prospective resolution applicants were invited.

The NCLAT noted that the Parliament with specific intention amended the Code to allow the promoters of MSME to submit Resolution Plan. It was further observed that The intention of the legislature shows that the Promoters of 'MSME' should be encouraged to pay back the amount with the satisfaction of the 'Committee of Creditors' to regain the control of the 'Corporate Debtor' and entrepreneurship by filing 'Resolution Plan' which is viable, feasible and fulfills other criteria as laid down by the 'Insolvency and Bankruptcy Board of India. In exceptional circumstances, if the 'Corporate Debtor' is MSME, it is not necessary for the Promoters to compete with other 'Resolution Applicants' to regain the control of the 'Corporate Debtor'."

