

Case Snippets

Volume 03, Number 20 (May 13, 2020)

Arunkant Rai Vs Allahabad Bank and others

(Company Appeal (AT) (Insolvency) No. 1251 of 2019) (NATIONAL COMPANY LAW APPELLATE TRIBUNAL)(11 February, 2020)

Section 7 of Insolvency and Bankruptcy Code, 2016 - Initiation of corporate insolvency resolution process by financial creditor

In the present case appeal was filed against the impugned order dated 27th August, 2019 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench.

The Adjudicating Authority admitted the application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016' filed by the Respondent No. 1 Allahabad Bank and 'Corporate Insolvency Resolution Process' (CIRP) was initiated.

The present Appeal has been filed raising grievances that the Allahabad Bank was part of Consortium in which the leading Bank was IDBI and Allahabad Bank. Reference is made to Inter-se Agreement between these Banks and Consortium Agreement which is also of the same date.

The learned counsel for the Appellant argued that as per these documents entered in to by the Allahabad Bank and IDBI, if Allahabad Bank wanted to take action, permission of IDBI Bank should have been taken giving 15 days notice to IDBI Bank.

Issue before NCLAT

The question before the NCLAT was that whether a bank had to seek permission or give notice to the lead member of the consortium before filing an application under section 7 of the code ?

Held

The NCLAT held that there is no bar in law which prevents a bank that had declared a non-performing asset from initiating proceedings under Section 7 of the Code, notwithstanding any consortium agreement(s) between banks.

Appeal was dismissed.



K.C. Sanjeev vs. Mr. Easwara Pillai Kesavan Nair & Ors.

(Company Appeal (AT) (Insolvency) No. 1427 of 2019) (28 February, 2020) (NCLAT)

**Section 12A read with 9 of Insolvency and Bankruptcy Code, 2016 -
Withdrawal of application admitted under sections 7, 9 or 10.**

In the present case Appellant had settled with the original Operational Creditor soon after the Application under Section 9 was admitted on 23.10.2019 and even filed the settlement with the IRP under Regulation 30 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 requesting the IRP to place the settlement before the Adjudicating Authority.

Appellant handed over the documents regarding the settlement to the IRP on 08th November, 2019, and the same were required to be placed before the Adjudicating Authority within three days as required by the Regulations but the IRP did not do so and proceeded to constitute CoC on 20th November, 2019.

Issue before NCLAT

The issue before the NCLAT was that when an applicant wishes to withdraw an application before the constitution of the committee of creditors, then whether Regulation 30A of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016 can simultaneously be resorted to?

Held

While deciding the matter NCLAT relied upon the decision of the Supreme Court in the matter of ***Swiss Ribbons Pvt. Ltd. vs. Union of India***, and held that when an applicant wishes to withdraw the application before constitution of the committee of creditors, while resorting to amended Regulation 30A of the (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, there is no bar on the party to simultaneously move an application for withdrawal before the adjudicating authority under Rule 11 of the NCLT Rules, 2016.

