

Case Snippets

Volume 03, Number 29 (July 15, 2020)

Asset Growth Fund And Ors. Vs CMRS Projects Pvt Ltd

C.P.(IB) NO 233/BB/219

(C.P.(IB) NO 233/BB/219) (NCLT, Bengaluru Bench) (Dated 23.06.2020)

In the present matter the Corporate Debtor was engaged in the business of real estate and property development. Corporate Debtor approached various Financial Creditors to raise funds for the project and an amount of Rs. 13,00,00,000/- was disbursed to the Corporate Debtor. The Financial Creditors had entered into a Trust Deed for the aforementioned amount lent.

The Corporate Debtor failed to pay back the amount and the debt fell due on 24.08.2018. Various settlement talks and some significant amounts was paid back towards the debt by the Corporate Debtor. Corporate Debtor and Financial Creditor entered into the One Time Settlement to the tune of Rs.14,50,00,000/-. But unfortunately due to COVID-19 Corporate Debtor is unable to adhere to settlement proposal and revised the payment term, which was in line with the earlier proposal to tune of Rs. 14,50,00,000 but the timeline of payment was varied.

The Corporate Debtor is commercially solvent, and is currently undertaking various projects. The Corporate Debtor has 17 employees whose monthly salaries are to the tune of Rs. 3,00,000/-, in addition to which he has engaged contract workers, who are migrants from various places, who have gone back to their native due to Covid-19. The Corporate Debtor has 110 homebuyers and other stakeholders on the line.



Issues before the tribunal :-

- Whether the initiation of CIRP is the only effective alternative available to the petitioner during these difficult time arising out of COVID -19?
- Whether the parties can be given one more chance to find a solution?

NCLAT held as follows :-

The Hon'ble Tribunal termed the initiation of CIRP proceedings at this instant would be a 'civil death' to the CD. This is considering the economic situation due to the pandemic and the continued payment of wages and other expenses as the company is solvent. The Tribunal further observed that it must be satisfied on the rounds for the initiation of such Petition by taking into consideration the object of the Code, financial status of the CD, whether the CD is a going concern, the effect of the initiation of CIRP on stakeholders and public at large. These conditions are to be considered, especially in this severe economic conditions of the pandemic. It was further observed that the issue must be seen in a positive way and the Petitioner cannot first initiate the CIRP and then later resolve the issues during CIRP proceedings.

The initiation of CIRP of the Corporate Debtor is not justified and parties must resolve the issue considering the prevailing economic pandemic situation .After exhausting all remedies including the proposed settlement, the Financial Creditors can invoke the provisions under the IBC. The Financial Creditors are required to re-consider the settlement proposal due to the severe economic conditions and that the Corporate Debtor is in going concern. The Respondent was directed to extent full cooperation to settlement efforts.

