IBC Case Laws

Supreme Court of India

Eva Agro Feeds Pvt. Ltd. Vs. Punjab National Bank and Anr. Civil Appeal No.7906 of 2021. Date of Supreme Court Judgement: September 06, 2023.

Facts of the Case

The present appeal is filed by Eva Agro Feeds Pvt. Ltd. (hereinafter referred to as the 'Appellant') after being aggrieved by the order dated 30.11.21 passed by the Appellate Tribunal. CIRP proceedings were initiated against M/s. Amrit Feeds Ltd/CD by One Huvepharma Sea Pvt. Ltd., and the same was accepted by the AA. The AA later ordered the Liquidation of the CD, and the Liquidator (hereinafter referred to as 'Respondent no. 2') was appointed. Several attempts to auction the CD's assets did not materialize. The Appellant, incorporated on 09.07.21, submitted a bid for the CD's assets and also paid an earnest money deposit (EMD) of ₹1 Cr.

The Appellant later submitted the bid amount of ₹10 Crore within the stipulated time prescribed under the sale notice in respect of the subject property. The Appellant received an E-auction certificate from Respondent no. 2 stating that it had won the auction. However, on an email dated 21.07.21 received from Respondent no. 2, it was stated that the E-auction process had been cancelled under clause 3(k) of the disclaimer clause in the E-auction process, and a fresh auction would be conducted. The Appellant filed an application against this decision to the AA, which instructed Respondent No. 2 to send communication to the Appellant for depositing the balance sale consideration. The appellant complied, and Respondent no. 2 issued a sale certificate. However, Punjab National Bank, in the capacity of a Financial Creditor (hereinafter referred as 'Respondent no. 1'), filed an appeal against the AA's decision, and the Appellate Tribunal ruled in their favor, setting aside the earlier order of AA and allowing Respondent no. 2 to initiate a fresh auction process. As a result, the Appellant has filed this appeal in the Apex Court, challenging the Appellate Tribunal's decision.

Supreme Court's Observations

The Apex Court, relying on judgments like *S. N Mukherjee vs. UOI 1990, State of Orissa vs Dhaniram Luhar 2004,*

East Coast Railway vs Mahadev Appa Rao 2010, and Kranti Associates (P) Ltd. vs Masood Ahmed Khan 2010, emphasized that recording reasons is a fundamental principle of natural justice governing the exercise of power by administrative authorities. The Court dismissed the argument that para 1(11A) of Schedule 1 of the IBBI (Liquidation process) Regulations, which mandates the liquidator to provide reasons for rejecting the highest bid, applies only prospectively since it was added on 30.09.21. The Apex Court clarified that this provision merely recognizes an existing principle, applicable even before 30.09.21.

The Court highlighted that, unless a material irregularity and/or illegality in holding the public auction and/ or the auction sale was vitiated by any fraud or collusion it is not open to set aside the auction or sale in favour of the highest bidder. Further, the contention of Respondent 2, that he was expecting higher price is not justifiable as the reserve price for the second auction was the same as in the first auction. Rejecting the Appellant's bid and going for another round of auction at the same reserve price without justification erodes the credibility of the auction process.

On the issue of related party, the Apex Court, citing *Phoenix ARC Pvt. Ltd. vs. Spade Financial Services Ltd.* 2021, found the disqualification attached to the appellant is groundless, as the related party had not been in control or an influential member of the company for over a decade.

Order: The Apex Court concluded that the Appellate Tribunal had erred in setting aside the order dated 12.08.21 passed by the AA. As a result, the Apex Court set aside the order dated 30.11.21 passed by the Appellate Tribunal and restored the order dated 12.08.21 passed by the AA.

Case Review: *Appeal Allowed.*

Paschimanchal Vidyut Vitran Nigam Ltd. Vs Raman Ispat Private Ltd. & ors. Civil Appeal No. 7976 OF 2019. Date of Supreme Court Judgement: July 17, 2023.

Facts of the Case

The Present appeal is filed by the Paschimanchal Vidyut Vitran Nigam Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the order of the Appellate Tribunal. The Appellate Tribunal rejected the Appellant's appeal against the order of AA which directed the District Magistrate and Tehsildar, Muzaffarnagar to release the property in favour of the liquidator.

Raman Ispat Pvt. Ltd. (hereinafter referred as 'Respondent') and the Appellant entered into power supply agreement on dated 11.02.2010. The Respondent failed to pay the electricity bills generated throughout the times, and therefore as per the agreement, the Appellant attached the properties. The Tehsildar Muzaffarnagar, by its order restrained the sale and transfers of the property and created a charge on them. The Respondent underwent the resolution process but upon its failure, the Respondent was later subjected to liquidation.

The total arrears from the Respondent amounted to ₹4,32,33,883/-, the District Collector issued a notice for recovery of dues to the tune of ₹2,50,14,080/-. The liquidator alleged that the attachment orders of the District Collector and of Tehsildar, Muzaffarnagar, needs to be set aside by the AA as the potential buyers were uncertain about the liquidator's authority to sell the property and hence making it difficult to find buyers. Additionally, the liquidator submitted that the Appellant claim would be classified in order of priority under Section 53 of the IBC.

The Appellate Tribunal instructed the DM and Tehsildar, Muzaffarnagar, to release the attached property in favor of the liquidator. The Appellate Tribunal also agreed with the AA's reasoning that the Appellant fell within the definition of 'operational creditor' and could recover its dues through the liquidation process. The Appellant stated that the Section 173 & 174 of the Electricity Act 2003 has an overriding effect over other laws including IBC and therefore the Appellant could opt to stay out of liquidation and recover its dues. Alternatively, the Appellant submitted that the electricity dues were also 'security interest' in favor of electricity service provider and therefore should be considered as Secured Creditors. The issue raised before the Apex court are: - 1. Whether IBC will override Electricity Act? 2. Whether the Appellant was a secured creditor?

Supreme Court's Observations

The Supreme Court relying on the Bankruptcy Law Reforms Committee Report, 2015 and the Preamble of IBC observed that the government dues have been given lower priority in waterfall mechanism under Section 53.

Placing reliance on its previous judgment delivered in Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs and Duncans Industries Ltd. v. AJ Agrochem, the Apex Court held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). Further, the Apex Court held that in the present case, dues payable to the Appellant do not fall within Section 53(1)(f) of IBC. The Appellant, which is undisputedly a secured creditor in the case, is entitled to its dues in accordance with the IBC mechanism.

Order: The Supreme Court held that the appeal deserves to fail and directed the Liquidator to decide the claim exercised by the Appellant in the manner required by the law. Further, the court directed to complete the process within 10 weeks from the date of pronouncement of the decision.

Case Review: *Appeal Dismissed.*

National Company Law Appellate Tribunal (NCLAT)

Sanjeev Kumar Sharma Vs. SREI Equipment Finance Ltd. Company Appeal (AT) (Insolvency) No. 909 of 2023. Date of NCLAT Judgement: August 17, 2023.

Facts of the Case

The Present appeal is filled by the Mr. Sanjeev Kumar Sharma (hereinafter refereed as 'Appellant') in the capacity of suspended director of Dadheech Infrastructures Pvt. Ltd. (CD), after being aggrieved by the impugned order dated 26.06.23 passed by the Adjudicating Authority.

Since 2007, the Appellant had a business relationship with the SREI Equipment Finance Ltd., (hereinafter referred as

'Respondent'). During the business relationship, several loan agreements were signed following which funds were transferred by the Respondent to the Appellant. Meanwhile, the Respondent was admitted into CIRP and was taken over by the Administrator. Claiming that an amount of ₹ 131.35 Cr. was due from the Appellant, Section 7 application (hereinafter referred as 'Main Petition') was filed by the authorized signatory on behalf of the Respondent showing date of default as 23.08.2021.

Later, a new authorized signatory of the Respondent was appointed by the Administrator to re-sign, re-verify and to make formal amendments to the main petition. The same was allowed by the AA on 01.07.2022. An IA was filed by the Appellant before the AA to decide on the maintainability of the main petition on the broad ground that despite the amendments made, the main application continued to remain defective, invalid and not maintainable. The matter came up for hearing before the AA and by order dated 26.06.2023, the main petition was allowed, and the Appellant was admitted into CIRP. The Appellant aggrieved that though hearing was done only in respect of IA application regarding the maintainability of the main petition and not for the main petition but surprisingly the order was passed on the main petition admitting the Appellant to the rigours of CIRP. Hence Appellant has invoked the appellate jurisdiction of the Tribunal.

NCLATs Observations

The Appellate Tribunal after observing the submissions of both the parties held that the institution of the main petition and continuance of the proceedings on behalf of the Respondent has been done by duly authorized persons at all points of time and therefore the AA did not commit any error in finding the main petition to be maintainable and valid.

The Appellate Tribunal, while supporting the observation of AA, further held that debt and default above the threshold limit have been established, and there is sufficient reason for admission of main petition and admitting the Appellant into the rigours of CIRP. Further, the Tribunal stated that procrastinated pronouncement of the order has given fodder to the Appellant in making the absurd claims of having not been heard. The Appellate Tribunal further observed that such unreasonable and explained delays in delivering verdicts are not desirable and the hyper technical and opportunistic pleas raised by the Appellant to stymie the admission of CIRP of the CD can't be countenanced either.

Order: The Appellate Tribunal held that there are being no sufficient and plausible grounds made which warrant any interference with the impugned order of AA, there is no merit in the appeal.

Case Review: *Appeal Dismissed.*

The Assistant Commissioner of Central Tax Vs. Mr. Sreenivasa Rao Ravinuthala & Ors. Company Appeal (AT) (CH) (INS.) No. 346/2021. Date of NCLAT Judgement: August 18, 2023.

Facts of the Case

The present appeal is filed by the Assistant Commissioner of Central Tax (hereinafter refereed as 'Appellant') after being aggrieved by the order dated 13.08.21 passed by the Adjudicating Authority.

The CD, M/s Samyu Glass Pvt. Ltd. entered into CIRP and the RP (hereinafter referred as 'Respondent' no. 1) was appointed by the AA. The resolution plan submitted by the M/s Renganayaki Agencies (hereinafter referred as 'Respondent no. 2') was approved by the CoC with 100% majority votes and same was also approved by the AA through its order dated 13.08.21.

The Appellant challenged the order and contended that the CD had defaulted in payment of the Central Excise Duty amounting to ₹22,60,32,948/- (including interest and penalty) but the Resolution Plan earmarked only 0.13% of the claim amount towards Government dues. Whereas the Financial Creditor and other Operational Creditors were given a higher percentage of their Claim amounts. The Appellant further stated that due to the attachment placed on the CD's assets, the Appellant should be categorized as a 'Secured Creditor. The Appellant placed its reliance on the judgment pronounced in State Tax Officer vs. Rainbow Papers Limited, (2022) SCC, wherein it was held that State is a Secured Creditor under GVAT Act 2003.

The Respondent no. 1 submitted that the Appellant's challenge comes after the approval of the Resolution Plan, which was subsequently implemented on 08.02.2022. The SRA has already spent ₹68,98,00,000/- following the approval of the Plan. The Respondent argues that the Appellant did not raise any objections when the claim

amount was initially communicated. The AA noted that the Resolution Plan was in accordance with Section 30(2) of Code and Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations, 2016, and approved the same by its order dated 13.08.21, resulting which the Appellant filed this appeal before Appellate Tribunal.

NCLAT's Observations

The Appellate Tribunal contented that the demand orders were issued to the CD were under Central Excise Act 1944 and its provision are distinct from the provisions of GVAT Act 2003. The Appellate Tribunal held that the usage of the words 'save as provided in' in Section 11E of Central Excise Act, 1944 is in the nature of an exception intended to exclude the class of cases, mentioned in Companies Act, 1956, The Recovery of Debts due to Banks and the Financial Institutions Act, 1993, SARFAESI Act, 2002 and IBC. Further, 'Secured Interest' as defined under IBC, excludes charges created by Operation of law.

The Appellate Tribunal referring to the Master Circular No.1053/02/2017-CX, issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, held that dues under 'Central Excise Act, 1944' would have first charge only after the dues under the Provisions of IBC are recovered. Therefore, the decision in the matter of State Tax Officer vs. Rainbow Papers Ltd. cannot be made applicable to the facts of this case and the Appellant cannot be treated as a Secured Creditor. The Appellate Tribunal placing their reliance on the judgment pronounced by the Apex court in Kalparaj Dharamshi & Anr. v. Kotal investment Advisors Ltd. & Anr., held that the Commercial Wisdom of the CoC is non-justiciable unless it is not in accordance with Section 30(2) of the Code.

Order: The Appellate Tribunal found no irregularities in the Resolution Plan under Section 30(2) of the Code. The Plan was fully executed and the SRA paid Rs. 35,25,00,000/- to all the Creditors. Further as over 2 years have passed since approval the Appellate Tribunal didn't find any tangible and substantial reasons to set the clock back at this point of time.

Case Review: *Appeal Dismissed.*

Laxman Singh (Ex-Director) of Divineseair Logistics Pvt. Ltd. Vs. Kerry Indev Logistics Pvt. Ltd. Company Appeal (AT)(Insolvency) No. 1002 of 2022. Date of NCLAT Judgement: August 10, 2023.

Facts of the Case

The Present appeal is filed by the Mr. Laxman Singh, Ex-Director of the Corporate Debtor M/s Divineseair Logistics Pvt. Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 18.02.22 passed by the Adjudicating Authority.

M/s Kerry Indev Logistics Pvt. Ltd. (hereinafter referred as 'Respondent-1) provided freight forwarding services to the CD. The Respondent-1 claimed that there were outstanding dues of ₹9,26,970/- along with an interest amount of ₹1,38,055/- for the services rendered. The Respondent-1 in the capacity of Operational Creditor served the demand notice dated 01.10.19, u/s 8 of the IBC. As no response was received from the CD the Respondent-1 filed Section 9 application for initiating CIRP before the AA, following which the AA admitted the Section 9 application.

The Appellant stated that they only referred clients to Respondent-1 for freight transportation and received commission in return. The Appellant stated that no contractual agreement existed between them, and they couldn't be held responsible for the dues as they weren't the consignee or beneficiary of the services. The Appellant also claimed that there was a pre-existing dispute to the Respondent no.1 and the security cheques were issued to secure commission for customer referrals and asserted that they are the Operational Creditor, not the Respondent-1.

The Respondent-1 contended that they fulfilled export services assigned by the CD and provided relevant Bills of Lading. The Respondent-1 submitted invoices with partial payments from the CD and stated that the cheques issued by the CD as a commission advance for referring a customer were rejected by the bank. Further, the Appellant did not raise any pre-existing dispute either before the issue of demand notice on in the reply thereof. The Respondent-1 further informed the Tribunal about its intention to withdraw the CIRP and stated that the issue

related to excessive fees demanded by the RP (hereinafter referred as Respondent-2) was the reason for delay in filing withdrawn application. The AA allowed the initiation of CIRP of the CD and dissatisfied with the AA's decision to accept the Section 9 application while disregarding pre-existing dispute, the Appellant filed this appeal.

NCLAT's Observations

The Appellate Tribunal after examining the submission of both the parties held that the emails shared between both the parties are clear admission of operational debt and the contention of the CD that there is no admitted debt is specious and lacks substance. The Appellate Tribunal further held that there is nothing on record to suggest that the Appellant raised any preexisting dispute before receipt of invoices or at any period prior to the issue of demand notice. Even the complaint of delay, purportedly received by the Appellant from its customers, does not seem to have been shared with the Respondent-1 prior to filing Section 9 application.

The Appellate Tribunal acknowledged that aggrieved with the hefty fees of the RP, the Respondent-1 filed a complaint before IBBI and held that the RP is expected to charge his fees in a transparent manner which should be reasonable reflection of the works undertaken rather than maximizing their own personal benefits.

The Appellate Tribunal further held that the RP should have facilitate the withdrawal of CIRP application, as desired by the sole CoC member, without unduly prolonging the proceedings. It is commonsensical that for recovery of a claim of about ₹10 lakhs, incurring an expenditure of ₹19 lakhs by way of fee/expenses of the RP is outlandish and that too when there seems to be no possibility of revival of the CD.

Order: By Exercising its inherent powers given under Rule 11of (NCLAT Rules), the Appellate Tribunal orders the closure of CIRP proceedings in the interests of justice. The CD is relieved from the rigors of the CIRP, and the RP is not entitled to demand any fees or expenses beyond the amount of ₹8 lakh that has already been received.

Case Review: *Appeal Disposed of.*

Anil Kumar Vs. Jayesh Sanghrajaka. & Ors. Company Appeal (AT) (Insolvency) No. 513 of 202, No. 753 of 2023 & IA No.1666 of 2023 Date of NCLAT Judgement: August 03, 2023.

Facts of the Case

Both the present appeals are filed by Mr. Anil Kumar, suspended director of SK Elite Industries (hereinafter referred as 'Appellant') after being aggrieved by the orders-dated 06.03.23 and 15.05.23 passed by the Adjudicating Authority.

M/s SK Elite Industries ('Corporate Debtor') entered in to the CIRP which led to the formation of the Committee of Creditors/CoC and appointment of RP (hereinafter referred as "Respondent no. 2" and Respondent no. 1, respectfully). The Respondent no. 2 set forth criteria for Potential Resolution Applicants (PRA's) and issued Expression of Interest forms. However, due to a limited response, the CoC extended the deadline for EoI submission. In light of this, a fresh Form G was issued, according to more time for interested parties to express their interest.

Despite the extended timeline, no initial resolution plans were received from the PRA's. An extension of the CIRP period was granted by the AA. The resolution plans received through PRAs to the CoC, during its successive meetings were unsatisfactory, the CoC, in response, permitted PRAs to revise their offer. However, the revisions were not received within the stipulated timeframe and thus the liquidation proceedings were initiated. During the 9th CoC meeting, the Appellant indicated a Section 12A settlement proposal, but submitted it after significant delay, i.e., just before the 11th CoC meeting. Despite the challenges, CoC meetings continued to evaluate plans, including one from M/s Metro Realty Group (hereinafter referred as 'Respondent no.3'). The resolution plan submitted by Respondent no. 3 was considered after a halt to liquidation proceedings. The plan was approved during the 19th CoC meeting, benefiting stakeholders and promoters. The Appellant didn't object to the resolution plan but later, filed the appeals challenging the orders.

The main issue raised before the Appellate Tribunal is: (i) Whether the exercise of commercial wisdom of the CoC in approving the resolution plan of Respondent No.3 is sustainable in the teeth of material irregularity alleged by the Appellant or not?

NCLAT's Observations

The Appellate Tribunal while placing their reliance on the judgement pronounced in Ngaitlang Dhar v Panna Pragati Infrastructure Pvt. Ltd. by the Hon'ble Supreme Court held that it's a trite law that commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the process within the timelines prescribed by the IBC.

The Appellate Tribunal further held that the CoC, led by the RP, ensured transparency by updating the AA about developments since the liquidation application. The 19th CoC meeting also clearly notes that multiple opportunities given to the Appellant to submit resolution proposal went futile. The Appellant even supported the resolution plan of Respondent No.3. Hence, there's no valid basis for the Appellant to claim unfair treatment in the resolution process.

The Appellate Tribunal further held that when the COC has approved a Resolution Plan by 100% voting share after considering its feasibility and viability, such decision of CoC is a commercial decision. The Appellant had multiple opportunities to submit a Section 12-A proposal but consistently failed to do so, and therefore, there is no sufficient ground for the Appellant to claim prejudice.

Order: The Appellate Tribunal held that the commercial wisdom of CoC in approving the Resolution Plan is not to be interfered in the exercise of jurisdiction of judicial review either by the Adjudicating Authority or by the Tribunal in the exercise of its appellate powers. Hence the AA did not commit any error in approving the resolution plan.

Case Review: *Appeal Dismissed.*

Monica Jajoo Vs PHL Fininvest Pvt. Ltd. & Mr. Jayant Prakash Company Appeal No. 1344 & 1345 of 2022. Date of NCLAT Judgement: July 21, 2023.

Facts of the Case

The present appeal was filed under section 61 of the IBC by Monica Jajoo (hereinafter referred as "Appellant") against two orders, dated 29.08.2022 and 16.9.2022, passed by the AA ('NCLT, New Delhi, Court -IV').

A Facility Agreement for a loan was entered into by M/s Piramal Finance Limited with M/s Hema Engineering Industries Ltd (hereinafter referred as'CD'). By virtue of an Assignment Agreement the above loan was assigned in favour of PHL Finvest Private Limited (hereinafter referred as "Respondent"). The Respondent issued a demand notice in under Rule 7(1) of the IBC seeking repayment of alleged outstanding of Rs. 443,36,21,727 and subsequently filed an application under section 95(1) of the IBC seeking initiation of personal insolvency against the Appellant who is the personal guarantor of the loan.

The personal insolvency against the Appellant was initiated vide AA's order dated 29.8.2022 and an RP was appointed. The Respondent further filed an application under section 98(1) for the replacement of the RP which was decided by the AA vide order dated 16.9.2022. The Appellant stated that procedure followed by the AA, in adjudicating the section 95 application vide Impugned Order dated 29.08.2022 and for replacement of the Resolution Professional vide Impugned Order dated 16.9.2022, was against the procedure prescribed under the IBC. The Appellant contended that the appointment/ replacement of the Resolution Professional was done without following the due procedure provided under section 98 of IBC. Further, the Appellant claimed that Bench-IV of NCLT, New Delhi had no jurisdiction to pass both the Impugned Orders, since liquidation proceedings of the CD was pending before the Bench-III of NCLT, New Delhi.

NCLAT's Observations

NCLAT referring to the State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia held that the sub sections (1) and (2) of section 60 lay down a requirement of law, which stipulates and mandates that an application relating to insolvency resolution or liquidation of corporate guarantor of a CD shall be filed before such NCLT, where a CIRP or liquidation proceedings of the same CD is pending.

The Appellate Tribunal held that even though transfer application was filed before the AA, it did not take the transfer application into consideration before passing both

the Impugned Orders. The Bench-IV of NCLT, New Delhi could not have heard and adjudicated upon the applications under section 95 and 98 and should have transferred these applications to Bench-III which was already considering the liquidation proceedings of the CD under the IBC.

Order: The Appellate Tribunal held that requirement of law has not been kept in mind while considering the applications under section 95 and 98, and accordingly it directed to set aside both the Impugned Orders. Further, the Appellate Tribunal directed that the application filed by the Respondent against the Appellant be heard afresh and decided by the same bench of NCLT, New Delhi, which considered the insolvency and liquidation application against the CD.

Case Review: *Appeal Allowed.*

Harish Sharma Vs. M/s. C & C Constructions Ltd., & Ors. Company Appeal (AT) (INS) NO. 368 of 2023 Date of NCLAT Judgement: July 05, 2023.

Facts of the Case

The Present Appeal is filed by Mr. Harish Sharma in the capacity of Operational Creditor (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 08.02.23 passed by the AA.

The Appellant became the operational Creditor of M/s C.C Construction Ltd. (hereinafter referred as 'CD'), by virtue of two distinct Assignment Agreements dated 15.12.22 executed with KM contractors and SNI Infratech. Upon the agreement the Appellant became eligible under section 230 of the companies Act, 2013 to submit a scheme of compromise and arrangements. The Appellant also became the power of attorney holder of Gulshan Investment Company Ltd. and Montage Enterprises Pvt. Ltd. and Anantjeet Nutriment LLP with whom it has formed a consortium for the ostensible reason of proposing a scheme of compromise and arrangements with respect to the CD.

The CD was entered into CIRP but due to lack of proper resolution proposal, the CD was sent for Liquidation and official Liquidator was appointed. The liquidator issued an invitation for the submission of a scheme of arrangement under section 230 of Companies Act, 2013, thereafter the Appellant made a request to the liquidator for granting the access to the Virtual data Room (VDR) and also submitted the supported document for the same but his request could not be completed within 90 days limit and therefore an IA dated 07.01.23 was filed by the Appellant for seeking extension of timeline regarding submission of Scheme. The said IA was rejected by the AA by the impugned order.

The Appellant further claims that he had finalized a scheme of arrangement but did not submit it due to the lack of an extension of the deadline requested through IA dated 07.01.23.

NCLAT's Observations

The Appellate Tribunal while placing its reliance on judgment delivered by the Apex Court and the Appellate Tribunal in Arun Kumar Jagatramka vs. Jindal Steel & Power Ltd. 2021 and Y. Shivaram Prasad vs. S. Dhanpal & Ors, 2019 held that the amendment dated 25.07.19 made to the Liquidation Process Regulation, 2016 by the IBBI recognizes a process envisaged u/s 230 of the companies Act, 2013 as a valid method of revival of CD during liquidation. Further, regulation 2-B clearly stipulates that submission of compromise and arrangement should be completed with-in 90 days from the order of Liquidation and clause 2 of 2-B clearly says that time taken for compromise or arrangement not be included in the Liquidation period.

The Appellate Tribunal further stated that the Appellant failed to provide proof of a formulated and ready scheme of compromise or arrangement, as well as the consent of 75% of the secured creditors of CD in support of such scheme. Merely requesting an extension of the timeline without demonstrating sincere and serious efforts in preparing and formulating the scheme indicates a lack of concrete action. The 90-day timeline prescribed under Regulation 2-B of the Liquidation Process Regulations, 2016 expired on 04.01.23 with no evidence of the scheme's readiness presented.

Order: The AA has not committed any error in passing the impugned order. No merit found in the appeal.

Case Review: *Appeal Dismissed.*

Naren Seth Vs. Sunrise Industries & Ors. With, Marine Electrical Ltd. Vs Sunrise Industries & Ors. Company Appeal (AT) (Insolvency) No. 401 of 2023, No. 695 of 2023. Date of NCLAT Judgement: July 04, 2023.

Facts of the Case

The present two appeals are filed by aggrieved parties in response to the impugned order dated 02.03.23 passed by the Adjudicating Authority (AA). The first is by Naren Seth (hereinafter refereed as the 'Appellant/Liquidator') and the other by Marine Electrical Ltd., the successful bidder. The CIRP application u/s 9 of IBC has been initiated by M/s Vijisan Exports Pvt. Ltd. in the capacity of Operational Creditor against the CD - Ciemme Jewels Ltd. before AA which was admitted and CIRP was initiated against the CD through an order dated 18.04.18. Due to non-receipt of any resolution plan the AA passed a liquidation order dated 25.03.19 and the official liquidator has been appointed.

The Liquidator contented that he conducted two separate auctions for the sale of premises of the CD, but both the auctions were unsuccessful as no bid was received. Subsequently, the 3rd Sale Notice was issued which was later revised due to certain dates being incorrect caused by typographical errors. Finally, the Liquidator issued a revised notice for sale of assets and date of E-auction was fixed on 08.04.22 for which the last date of submission of Expression of Interest (EoI) by bidders was fixed on 04.04.22.

The Marine Electrical India Ltd., the successful bidder and appellant in second appeal submitted that all the formalities towards bidding process have been furnished within stipulated time including required payment of EMD and Sales Certificate was obtained dated 11.05.22. It also stated that the AA has wrongly passed the impugned order in setting aside the E-auction dated 08.04.22 without granting an opportunity to the successful bidder.

The Sunrise Industries (hereinafter referred as 'Respondent-1') submitted that the liquidator published E-auction notice with vital errors and wrongful intention. Besides, only one working day was given for submission of documents and no time was provided to due diligence including site visit, executing the required documents and the money needed for EMD. Learned counsel for Respondents assailed the conduct of Liquidator and stated that even the corrigendum on the IBBI website and newspapers was published on 08.04.22 and 09.04.22, after the sale was concluded. The Main issue arises in the present two appeals before the Appellate Tribunal is that: (i) Whether the correct procedure was followed in the E-auction or not? (ii) Whether auction was conducted in haste without giving adequate opportunity to all to participate?

NCLAT's Observations

The Appellate Tribunal said that after examining the submission of both the parties, the dates which are published in previous bidding notice and later on changed can't be treated as typographical errors as claimed by the liquidator and entire auction was conducted in just five days including weekend. However, no specific timeline has been given in the IBBI (Liquidation Process) Regulations, 2016 but normally notice period of 30 days should be given to get the best value.

The Appellate Tribunal also agreed to the observations of the AA that the 'haste' and 'procedural irregularities' committed by the Liquidator in conducting the auction clearly points out finger towards his conduct. The Appellate Tribunal while placing reliance on the judgment given by Hon'ble Supreme Court in the matter of M/s Jainsons Exports India Vs. Binatone Electronics Ltd, 1996, said that “the purpose of open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value”. The liquidator acted in hurry in conducting the E-auction without giving adequate opportunity to the entire participant.

Order: The Appellate Tribunal didn't find any error in the impugned order dated 02.03.23 wherein the E-auction was set aside, and it was held that the Liquidator must bear all expenses incurred for the auction. It also did not appreciate the conduct of liquidator in whole process as observed by AA.

Case Review: *Both the Appeals Dismissed.*

National Company Law Tribunal (NCLT)

***Deutsche Bank A.G Vs. Mr. Devendra Umrao*. IA. NO. 3846/ND/2023 & IA-1175/ND/2022 in C.P. (IB)-2240(ND)/2019. Date of NCLT Judgement: September 18, 2023**

Facts of the Case

The Present IA (NO. 3846/ND/2023) is filed by the Deutsche Bank A.G (hereinafter referred as 'Applicant') against the resolution plan submitted by the Resolution Professional (hereinafter referred as 'Respondent') through IA (No1175/ND/2022).

The main CIRP petition was filled by M/s Hi-tech Resource Management Ltd. against, M/s Overnite Express Ltd ('CD') u/s 7 of IBC, 2016 and the same was admitted vide order dated 02.03.2020. The Applicant has raised concerns that secured creditors have been offered a meager amount of ₹3,24,62,545/- against total admitted claims of ₹10,82,08,485/-, which represents approximately 30% of the total admitted claims. Given the Applicant's claim of ₹6,00,26,716.30/-, they are set to receive only 30% of their admitted claim and this offer has been made without considering the security held by the Applicant, which is valued at more than ₹12 crores as of the current date. The Applicant further stated that they are entitled to equivalent the value of their security/Mortgage property, as held by the Hon'ble Apex Court in the cases of *Jaypee Kensington Boulevard Apartments Welfare Assn. vs. NBCC (India) Ltd*. and *India Resurgence ARC Pvt. Ltd. vs. Amit Metaliks Ltd*., and also stated that, the Respondent has not included the Applicant's claims, even after admitting it before AA. The Applicant further contended that the suspended director of CD has submitted the resolution plan claiming that CD falls under the MSME category in terms of the Central Govt. notification and is fraudulently trying to take advantage available to MSME u/s 240A of the Code.

The Respondent submitted that he took legal opinion before obtaining MSME license for the CD and cited the judgement of the Appellate Tribunal in *Govind Prasad Todi vs. Satyanarayana Gudetti and Ors*. where promoters who obtained an MSME certificate after CIRP initiation submitted a resolution plan. The Respondent also stated that the dissenting Financial Creditors who did not support the Resolution Plan would be paid the liquidation value in accordance with the provisions under Section 30(2) read with Section 53 of the Code.

The main issue raised before the AA is: (i) Whether the MSME Certificate obtained after the commencement of CIRP is valid for making a Defaulter Promoter eligible to submit a Resolution Plan under Section 240A of IBC, 2016. or not?

NCLT's Observations

The AA while placing its reliance on judgement pronounced by the Appellate Tribunal in *Harkirat Singh Bedi vs. The Oriental Bank of Commerce & Anr*., observed that an MSME Certificate obtained by Promoter(s)/ ExDirector(s) post-commencement of the CIRP is invalid and it will not make them eligible to submit an EOI or the Resolution Plan by taking benefit of Section 240A of IBC 2016.

The AA further stated that the RP/CoC members can obtain the MSME certificate after commencement of CIRP, either for the purpose of availing the business advantages available under the MSME Act, 2006 or for availing the preference in the marketing of its product which are in overall interest of maximizing the value of assets of the CD.

Further, the AA while placing its reliance on the judgment delivered by the Apex court in *Arun Kumar jagatramka Vs. Jindal Steel and power Ltd. & Anr.* 2019, observed that Section 29A was incorporated to prevent unscrupulous persons from gaining control over the affairs of the company, including those who by their misconduct have contributed to the defaults of the company or are otherwise undesirable. Hence, neither Section 25 nor Section 28 of IBC empowers the Respondent or CoC to obtain an MSME Certificate to enable the back door entry of the defaulting Promoter/Suspended Management into the CD, who is otherwise barred under Section 29A of IBC to submit the EOI/Resolution Plan.

Order: The AA rejected the resolution plan and allowed the IA. Furthermore, it stated that since a period far exceeding 330 days of the CIRP has already elapsed, the CD should be liquidated with immediate effect in terms of Section 34(4) of the IBC, and a Liquidator is appointed.

Case Review: *The IA (NO. 3846/ND/2023) filed by the Deutsche Bank A.G is allowed, and IA (No1175/ND/2022) filed by the Respondent is rejected.*

Suraksha Realty Ltd. Vs. Mr. Anuj Bajpai. IA No. 1758/2022 in C.P.(IB)2808/2018. Date of NCLT Judgement: September 04, 2023.

Facts of the Case

The present IA is filed by the Suraksha Realty Ltd. (hereinafter referred as 'Applicant') in CIRP proceedings of the Corporate Debtor Panache Aluminum Extrutions Pvt. Ltd., after being aggrieved by the actions of Mr. Anuj Bajpai, Resolution Professional of CD (hereinafter referred as 'Respondent'). The CIRP proceedings were initiated against the CD by an order dated 31.12.19 passed by the AA and the RP was appointed.

As per the Applicant, the CD along with its group company-Blockwel Pvt. Ltd., sought a financial assistance of ₹3 crores from him. The loan was provided as per agreed terms of agreement executed between the Applicant and CD (borrower) with its group company as 'Co-borrower' at an interest rate of 15% per annum and 210-days of repayment period. To secure the loan, physical shares of the Blockwel Pvt. Ltd. were pledged.

The Applicant vide letter dated 09.12.18 demanded a total payment of ₹ 9.30 crores from the CD and Co-borrower informing them that it would invoke the agreement on 'Pledge of Shares' if the payment was not made. However, no payment was received despite this letter. The applicant contended that he got to know about the CIRP proceedings only after being contacted by the police and he was unaware of the claims process and could not file their claim as a secured Financial Creditor. The Applicant believes that the Respondent should have been aware of these secured loans and advances based on the CD's records such as ledger accounts and balance sheets, and the CoC did the same mistake while approving the Resolution Plan without informing to PRAs about such claims.

The Respondent contends that the Applicant's claim is time-barred due to failure to meet the Regulation 12 of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, and once a CoC-approved Resolution Plan is in place, new claims cannot be accepted. Further, the Respondent submitted that the Code doesn't require individual notifications to creditors, as the necessary regulations, including the Public Announcement, were followed and the Applicant has not proven the existence of any mortgage or security from the CD that would establish a charge in favor of the Applicant.

NCLT's Observations

The AA placed reliance on the judgment pronounced by the Apex court in the case of *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.,* 2021 whereby it was held that due adherence to the timelines provided in the Code and related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution and if a claim is not made within the stipulated time, the same cannot become part of the Information Memorandum to be prepared by the IRP.

The AA further stated that the Respondent can't be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the stipulated time and the extended time as permitted by Regulation 12. It was further observed that SRA should not be burdened with unresolved claims that arise after their Resolution Plan has been accepted, as this would introduce uncertainty regarding the amounts payable by the prospective resolution applicant taking over the CD's business.

Order: The AA said that the Resolution Plan has already been approved by the CoC which is pending for approval with the AA. Therefore, admission of any claim at this stage would jeopardize the whole CIRP process.

Case Review: *IA Application Dismissed.*

M/s Bezel Stockbrokers Private Limited Vs Security Exchange Board of India (SEBI) & Insolvency and Bankruptcy Board of India (IBBI), Company Petition No. (IB) -251 (ND)/2021. Date of NCLT Judgement: August 02, 2023.

Facts of the Case

The present application is filed by M/s Bezel Stockbrokers Pvt. Ltd. in the capacity of Corporate Debtor (hereinafter referred as 'Applicant 'or 'Company') for initiating CIRP against itself u/s 10 of IBC before Adjudication Authority (AA).

The Applicant being a stockbroker company incorporated under the Companies Act, 1956, registered with ROC Delhi, and also registered with SEBI under (Stockbrokers

and Sub-Brokers) Regulations, 1992 since 14.06.2019. The Applicant has been engaged in the business of stock brokering, proprietary trading, and clearing member services for buying, selling, and dealing in securities etc., as permitted by the stock exchange(s)/clearing corporation and subject to conditions specified by the SEBI.

Due to the financial crisis, the Applicant couldn't deposit the required 20% margin for the stocks purchased on behalf of its clients as per SEBI rules. Consequently, the SEBI forfeited the shares, resulting in a significant liability of ₹3,35,84,815/- towards the shareholders/ clients of the Applicant. Additionally, the advance funds (Cash & Collateral) provided by clients for future orders were not returned by the Company, adding a further liability of ₹ 91,78,621/-. Therefore, the total liability towards its clients amounts to ₹4,27,63,436/-. The Applicant has been facing increasing losses year after year, making it impossible to continue its operations. Consequently, the Applicant has been declared a defaulter and expelled from the NSE membership. In light of these circumstances, the Applicant has decided to file this Application under Section 10 of the IBC 2016.

The SEBI (hereinafter referred as 'Respondent No.1') submitted that the Applicant is a Financial Service provider as defined u/s 3(7) of the code and does not cover within the definition of the 'CD'. The main issue that emerges from the submission of the parties before the AA is: (i) Whether a Stockbroker Company is a Financial Service Provider?

NCLT's Observations

The AA observed that u/s 3(15) of IBC, 'Securities' and various types of 'Contracts' are considered as Financial Products. Since these terms are not explicitly defined in IBC, the AA referred to Section 2 of the Securities Contracts (Regulation) Act, 1956, which includes Shares, Scrips, Stocks, Bonds, Debentures, and Debenture Stocks under the term Securities, thereby treating them as Financial Products under Section 3(15) of IBC.

The AA concluded that the Applicant, being a stockbroker dealing in securities (considered Financial Products under section 3(15) of IBC), was providing 'Financial Services' as per Section 3(16) and, therefore, qualified as a 'Financial Service Provider'. Additionally, the Applicant was registered with SEBI, which is a 'Financial Sector Regulator' in terms of Section 3(18) of IBC, thus the Applicant falls under the control and supervision of SEBI as a Financial Service Provider.

Order: The AA observed that a stockbroker company will be considered as a Financial Service Provider, thus the Applicant being a "Financial Service Provider" is outside the purview of the definition of a "Corporate Person" as defined under Section 3(7) of IBC 2016 and therefore, could not be considered as a "Corporate Debtor" u/s 3(8) of IBC, 2016.

Case Review: *Application Dismissed.*