

Restructuring & Insolvency

Monthly Newsletter

April 2023

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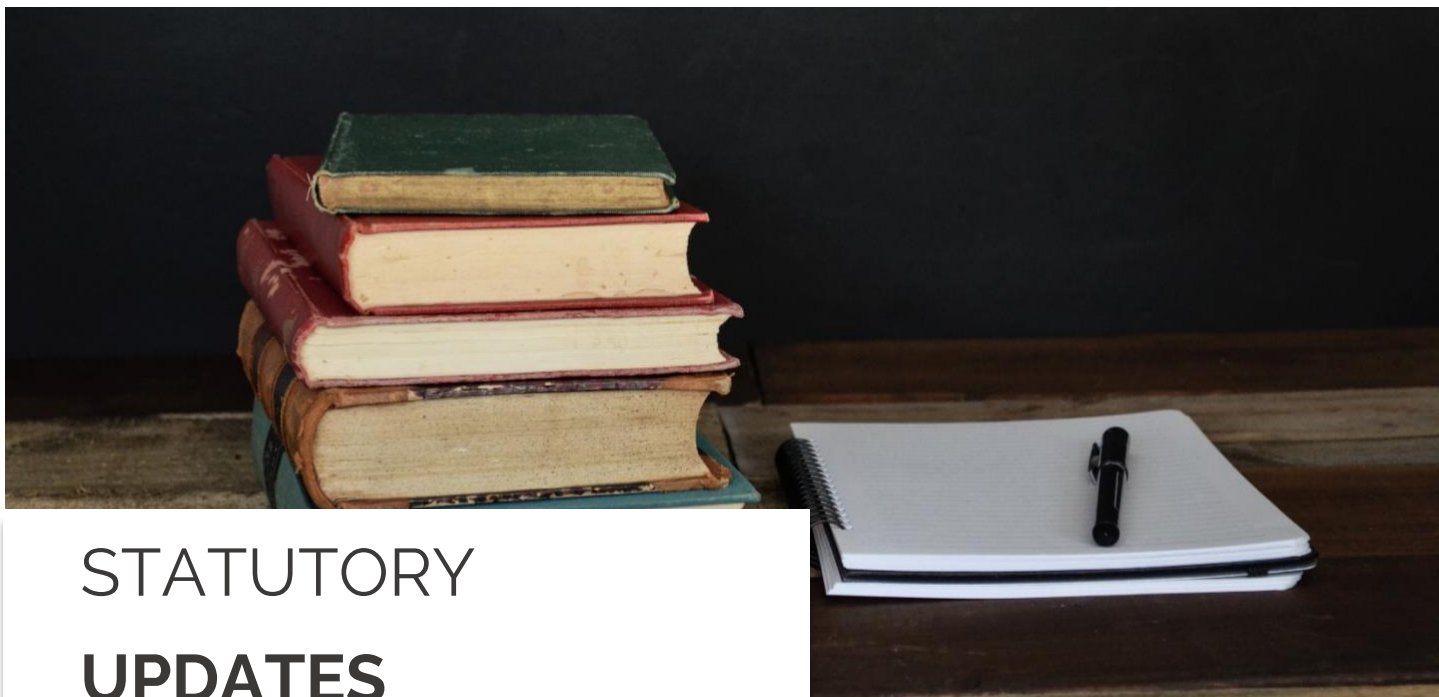
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STATUTORY UPDATES

Serving of copy of applications to the Board, as mandated under Rules 4, 6 and 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

- The Insolvency and Bankruptcy Board of India (IBBI) vide Circular dated March 04, 2023 revised the format for serving a copy of the application for initiating Corporate Insolvency Resolution Process (CIRP) against a Corporate Debtor to IBBI, before filing the same with the Adjudicating Authority.
- The said Circular has been issued in supersession of the earlier Circular [Serving of copy of applications to the Board, as mandated under Rules 4, 6 and 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016] issued on October 29, 2020, vide which IBBI had made available on its website the facility for serving a copy to it.
- Recently, the IBBI in a Circular issued on June 15, 2022 provided that the applications for initiating CIRP against Corporate Debtors served upon the IBBI will be forwarded to the Information Utility (IU). Vide the said Circular, the IBBI further provided that upon receiving the applications, the IU is required to conduct the following additional functions:
 - Inform other creditors of the Corporate Debtors by sharing the application with them.
 - Issue notice to the applicants, requiring them to file 'information of default' as per the IU Regulations.
 - Process the 'information of default' for the purpose of issuing ROD as per the IU.
- In order to ensure compliance with the abovementioned Circular dated June 15, 2022, and to enable the IBBI to share information relating to the application for initiation of CIRP with the IU, the IBBI issued the instant Circular to revise the format for serving a copy of the application to the IBBI. **Annexure A** to the Circular provides the revised format, whereas **Annexure B** provides a step-by-step guide for the same.



RECENT JUDGMENTS

Diwakar Sharma v. Anand Sonbhadra, RP of Subhkamna Buildtech Pvt Ltd & Anr

National Company Law Appellate Tribunal Principal Bench, New Delhi | Judgment dated March 28, 2023 |
Company Appeal (AT) (Insolvency) No. 1446 of 2022 & IA No. 4551 of 2022

Background facts

- An Appeal was preferred against the Order dated September 12, 2022 (**Impugned Order**) passed by the National Company Law Tribunal, New Delhi, Court IV (**NCLT**) allowing the Application filed by Mr. Anand Sonbhadra, the Resolution professional (**RP**) of Subhkamna Buildtech Pvt Ltd (**Corporate Debtor**) filed under Section 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) and thereby approving the implementation of the Resolution Plan submitted by Mr. Surendra Kumar Singhal and Mr. Sunil Kumar Agarwal and approved by the Committee of Creditors (**COC**) of the Corporate Debtor.
- Aggrieved by the Impugned Order, the Appellant preferred an Appeal against the same on November 10, 2022. Along with the Appeal, I.A. No. 4551 of 2022 was filed seeking condonation of the delay in filing the Appeal on the ground that the Appellant, being in jail since September 12, 2018, was not aware of the passing of the Impugned Order until the same was couriered to him by the RP of the Corporate Debtor, on October 11, 2022.
- Based on his lack of knowledge, the Appellant contended that the limitation period for filing of the Appeal under the IBC should be counted not from the date of the Impugned Order, but from the date on which the Impugned Order was received by the Appellant, i.e., October 11, 2022.

Issue at hand?

- Whether a delay of more than 45 days in the filing of an Appeal under Section 61 of the IBC can be condoned by the National Company Law Appellate Tribunal (**NCLAT**)?

Decision of the Tribunal

- The NCLAT, relying on Section 61 of the IBC which deals with Appeals and the Appellate Authority, observed that the said Section confers a right of Appeal to an aggrieved person within 30 days, which can further be extended by another 15 days upon the satisfaction of the Appellate Authority (NCLAT), however, there is no provisions under the IBC to condone the delay in filing of an Appeal beyond 15 days.
- Further, reliance was placed on the decisions of the Supreme Court in V Nagarajan v. SKS Ispat and Power Ltd¹ and National Spot Exchange Ltd v. Mr. Anil Kohli, RP for Dunar Foods Ltd² to

HSA Viewpoint

In dismissing the present Appeal, the NCLAT has yet again ruled in accordance with the well-settled position of law that the limitation period under Section 61 will commence from the date of the Order sought to be applied, and not from the date on which the appellant is made aware of the Order. This position is in line with the object of the IBC and the strict deadlines and short timelines devised thereunder, to ensure speedy resolution.

¹ (2022) 2 SCC 244

² C.A. No. 6187 of 2021

hold that Section 61 of the IBC is clear in providing that the limitation period be calculated not from when the Order is made available to the aggrieved party.

- In view of the above-submissions, NCLAT dismissed the Application seeking condonation of delay in filing the Appeal and consequently, dismissed the Appeal as being time-barred.

VRG Healthcare Pvt Ltd v. VRG Infrastructure Pvt Ltd

National Company Law Appellate Tribunal Principal Bench, New Delhi | Judgment dated March 22, 2023 | Company. Appeal. (AT) (Ins.) No. 778 of 2020

Background facts

- An Appeal was filed against the Impugned Order dated March 20, 2020 passed by the NCLT, Mumbai Bench whereby the Petition filed by the Appellant under Section 7 of the IBC was dismissed by the NCLT, holding that the Petitioner's claim is not a 'financial debt' within the meaning of Section 5(8) of the IBC.
- The Appellant and the Respondent, though not group companies, are companies having common promoter directors and shareholders, viz. inter alia Mr. Ganesh Chakkarwar and Mr. Gitesh Muttemwar.
- On February 12, 2011, a sum of INR 25 lakh was transferred from the Respondent to the Appellant vide Cheque No. 490804. However, the said amount was to be credited to Mr. Muttemwar. The Appellant company repaid this amount to Mr. Muttemwar vide several transactions, the last of which was paid on May 31, 2016. This is reflected in the ledger account of the Appellant.
- On August 30, 2016, Mr. Muttemwar resigned from the Board of Directors of the Appellant. In August 2016, the shareholding of the Appellant company was also altered as Dr. Paltewar purchased the shares of the Appellant company. Despite the resignation of Mr. Muttemwar, Mr. Chakkarwar continued to be the CMD of the Appellant company, as well as the common director of both the Appellant and the Respondent companies.
- The Appellant company gave an unsecured loan of INR 25 lakh to the Respondent company vide Cheques dated July 21, 2017 and August 05, 2017. It is pertinent to note that at this time, Mr. Chakkarwar was the CMD of the Appellant company and the common director of both the companies. On November 17, 2017, he resigned as the CMD of the Appellant company.
- The Appellant company contends that the Respondent company has not repaid this unsecured loan of INR 25 lakh till date, despite the Appellant company's legal notice dated January 10, 2019 addressed to the Respondent company, seeking repayment of the loan.
- The Respondent company contends that the cheques of INR 25 lakh issued by the Appellant company were in the nature of repayment of the loan previously granted to it by the Respondent company.
- The Respondent company further contends that the amount extended is not a financial debt within the meaning of Section 5(8) of the IBC, as there is no written agreement between the parties, nor is there any demand for payment of interest. Thus, the amount has not been extended against the time value of money, which is a requirement to attract the definition of 'financial debt' under Section 5(8) of the IBC.

Issue at hand?

- Whether a sum of money extended by a company to another, where both the companies are not group companies, but have a common management, qualifies as a 'financial debt' if it hasn't been extended against the time value of money and in the absence of an agreement between the parties?

Decision of the Tribunal

- The NCLAT dismissed the Appeal and affirmed the Impugned Order, observing that the NCLT, Mumbai Bench had correctly held that there was no disbursement made for the time value of money and therefore, there was no financial debt owed by the Respondent company to the Appellant company.
- Recording that the Appellant has not produced any agreement between the Parties that the amount was extended to the Respondent company against the time value of money and that an interest was payable on the same, the NCLAT upheld the findings of the NCLT.
- The NCLAT also affirmed the holding of the NCLT, Mumbai Bench relying on the position as laid down by the Hon'ble Supreme Court in Anuj Jain v. Axis Bank, Civil Appeal No. 8512-8527 of 2019 that in order to qualify as 'financial debt', it is necessary that the amount is advanced against the time value of money.

HSA **Viewpoint**

The NCLAT in this decision reaffirms the position of law pertaining to the nature of financial debt. In order to fall within the definition of the term under Section 5(8) of IBC, it must be a debt disbursed against the consideration for the time value of money. The NCLAT reinforced the difference between the terms 'means' and 'includes', to hold that while the debt need not fit into any of the illustrations enumerated under clauses (a) to (i), the requirement of it being a debt disbursed for the time value of money is an essential to fall within the definition of financial debt under Section 5(8) of IBC.

Mr. Karthikeyan VR Venkatakrishnan, Liquidator of St. John Freight Systems Ltd & Anr

National Company Law Appellate Tribunal, Chennai | IA No. 128 of 2023 in Company Appeal (AT)(CH)(Ins) No. 35 of 2023

Background facts

- The Appellant, a member of the Stakeholders Consultation Committee (SCC) of the Corporate Debtor John Freight Systems Ltd filed the present Appeal and the accompanying Application seeking leave to prefer the Appeal against the Order dated January 19, 2023 passed by the National Company Law Tribunal, Chennai, Bench II (NCLT) whereby the sale of the Corporate Debtor as a Going Concern was allowed by the NCLT.
- In terms of the Impugned Order, a Sale Agreement dated January 27, 2023 was executed between the Corporate Debtor and GC Logistics India Pvt Ltd (**Respondent No. 2/Purchaser**) vide which the management of the Corporate Debtor was handed over to the Purchaser for the consideration of INR 44,64,00,000 and the same was distributed to the stakeholders of the Corporate Debtor in terms of Section 53 of the IBC.
- Challenging the Impugned Order, the Appellant contended that under Section 61 of the IBC, no sufficient cause is required to be proved in order to prefer an Appeal before the Appellate Authority. Any person aggrieved by an Order of the Adjudicating Authority may prefer an Appeal as a matter of right.
- According to the Appellant, the process of sale of the Corporate Debtor and the realization of the proceeds thereof was erroneous and violated the Appellant's right to receive payment under Section 53 of the IBC in lieu of its claim against the Corporate Debtor.

Issue at hand?

- Whether a member of the Stakeholders Consultation Committee of the Corporate Debtor, who is not a party to the Application seeking the approval of the sale of the Corporate Debtor as a Going Concern, can prefer an Appeal against the Order of the NCLT approving such sale?

Decision of the Tribunal

- The NCLAT observed that the Appellant was neither a party to the Application filed by Respondent No. 1, i.e., the Liquidator of the Corporate Debtor for seeking the approval of the Adjudicating Authority to conduct the sale of the Corporate Debtor as a going concern, nor was the Appellant a stakeholder in the liquidation process of the Corporate Debtor.
- Accepting the contention of the Respondents, the NCLAT held that the Appellant had not filed any objections before the Adjudicating Authority at the time of the commencement of liquidation process of the Corporate Debtor in 2019. Moreover, the Appellant's Applications seeking several reliefs against the Respondent were rightly dismissed by the Adjudicating Authority.
- The Appellant had even challenged the Order dated March 11, 2022 passed by the Adjudicating Authority whereby Respondent No. 1 was permitted to conduct the Swiss Challenge Auction of the Corporate Debtor. However, the Appellant's Application challenging the same was dismissed by the NCLAT vide Order dated July 11, 2022 in Company Appeal (AT)(CH)(Ins.) No. 238 of 2022.
- The NCLAT further relied on the fact that the Appellant had neither attended a meeting convened on April 06, 2022, to received and consider bids in the Swiss Challenge for the Corporate Debtor, nor had the Appellant made any other offer.
- The NCLAT dismissed the Appeal and the Application seeking leave to prefer the Appeal, holding that the same was otiose and filed solely to disrupt the liquidation process of the Corporate Debtor.

HSA **Viewpoint**

This decision of the NCLAT holds that a party who is not a stakeholder in the liquidation process of the Corporate Debtor cannot be permitted to thwart the successful sale of the Corporate Debtor as a Going Concern by filing frivolous challenges. In so holding, the NCLAT upholds the spirit of the IBC and comes down strong against frivolous litigation amounting to abuse of the process.

Deepak Modi v. Shalfeyo Industries Pvt Ltd and Anr

National Company Law Appellate Tribunal Principal Bench, New Delhi | Judgment dated March 31, 2023 | Company. Appeal. (AT) (Ins.) No. 1019 of 2022

Background facts

- An Appeal was filed against the Impugned Order dated August 16, 2022 passed by the NCLT, Jaipur Bench whereby the Petition filed by Prime Impex (**Operational Creditor/Respondent No. 2**) under Section 9 of the IBC was admitted by the NCLT, the CIRP in respect of Shalfeyo Industries Pvt Ltd (erstwhile Adelante Exim India Pvt Ltd) (**Corporate Debtor/Respondent No. 1**) was initiated and Mr. Umang Jain was appointed as the Interim Resolution Professional of the Corporate Debtor. Aggrieved by this Order, the suspended director of the Corporate Debtor preferred this Appeal before the NCLAT.

- In the Petition filed under Section 9, Respondent No. 2 had alleged that the Corporate Debtor had placed purchase orders for the supply of granite stones with the Respondent No. 2 for a total amount of INR 14,78,420 out of which, the Corporate Debtor had failed to repay an amount of INR 11,95,447. The Corporate Debtor thus owed an operational debt to Respondent No. 2.
- The Corporate Debtor opposed the Petition before the NCLT, contending that there was a pre-existing dispute between itself and Respondent No. 2. The Corporate Debtor alleged that Corporate Debtor had placed the order for granite slabs to complete the flooring work at the Jaipur Airport, allotted to the Corporate Debtor by one SGB Infra Ltd (**SGB Infra**). Vide its letter dated December 16, 2019, SGB Infra directed the Corporate Debtor to remove the flooring, as the granite slabs were not of the thickness required.
- The Corporate Debtor alleged that owing to its supply of deficient goods, the Corporate Debtor had withheld the payment owed to Respondent No. 2. It thus contended that there was a pre-existing dispute between the parties.
- The NCLT, upon examining the material before it, held that the Corporate Debtor had accepted the delivery of the material from Respondent No. 2 without raising any concerns regarding the quality of the same. It was only on December 15, 2019, when the Corporate Debtor received the inspections report from SGB Infra, that it raised a dispute pertaining to the thickness of the granite slabs.
- Accepting the submission of the Operational Creditor that the Corporate Debtor had in fact consumed the goods delivered by the Operational Creditor and raised a dispute subsequent to the same, the NCLT held that there was a clear case of debt which had been defaulted by the Corporate Debtor. Observing thus, it admitted the Petition and initiated the CIRP in respect of the Corporate Debtor. Aggrieved by this Order, the Corporate Debtor filed the present Appeal.

Issue at hand?

- Whether a dispute raised by a Corporate Debtor subsequent to its consumption of the goods amounts to a pre-existing dispute?

Decision of the Tribunal

- The NCLAT categorically held that if the Adjudicating Authority is satisfied that there is a pre-existing dispute between the parties at the time of entertaining an Application filed under Section 9 of the IBC, there is no reason to initiate the CIRP. However, there must be a 'pure' or 'genuine' pre-existing dispute.
- Relying on the material available on record, and particularly the letter dated December 16, 2019 addressed by SGB Infra to the Corporate Debtor, the NCLAT observed that the fact that SGB Infra asked the Corporate Debtor to remove the flooring itself indicates that the Corporate Debtor had in fact received the delivery of the granite slabs from the Operational Creditor and consumed the material.
- Based on this, the NCLAT held that the plea of the Corporate Debtor pertaining to the pre-existence of a dispute between the parties is a moonshine defense and there is no dispute between the parties.
- The Appeal was thus dismissed, affirming the decision of the NCLT Jaipur Bench initiating the CIRP in respect of the Corporate Debtor.

HSA **Viewpoint**

The NCLAT delivered a clear position on the nature of pre-existing dispute under Section 8 of the IBC. While upholding the settled legal view that in case the NCLT is satisfied of the existence of a dispute between the parties, an Application under Section 9 of the IBC must not be admitted, the Appellate Authority clarified that merely an allegation raised by the Corporate Debtor subsequent to its consumption of the contracted goods cannot be sufficient to establish a pre-existing dispute and that such a dispute must be a genuine dispute between the parties. Thus, the threshold of the enquiry to be conducted by the NCLT at the time of assessing an Application under Section 9 of the IBC does not end at finding whether the Corporate Debtor has raised a dispute but requires the NCLT to ascertain whether the same is a pure and pre-existing dispute or merely a moonshine defense.



RECENT DEALS

Resolution of Lanco Mandakini Hydro Energy Pvt Ltd

- The NCLT, Allahabad Bench, vide an Order dated March 23, 2023 approved the Resolution Plan submitted by Statkraft IH Holding AS, the Successful Resolution Applicant, in the CIRP of Lanco Mandakini Hydro Energy Pvt Ltd, the Corporate Debtor.
- Vide Order dated June 11, 2020, the NCLT, Allahabad Bench admitted the Company Petition filed by Axis Bank Limited under Section 7 of the Code and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr. Bhrugeth Ramchandra Amin as the Interim Resolution Professional.
- Pursuant thereto, the Interim Resolution Professional constituted the Committee of Creditors in accordance with Section 21(2) of the Code, which comprised four financial creditors i.e., Canara Bank, holding 23.21% voting share, Punjab National Bank holding 49.68% voting share, Axis Bank holding 16.41% voting share and Bank of Baroda holding 10.70% voting share. In the CoC meeting held on July 13, 2020, the appointment of Mr Bhrugeth Ramchandra Amin as the Resolution Professional was confirmed by the CoC.
- After issuance of Form G, in terms of Section 25(2)(h) of the IBC read with Regulation 36A (1) of the CIRP Regulations, 2016, two Prospective Resolution Applicants – Statkraft IH Holding AS and Scatec Solar Netherlands BV – submitted Resolution Plans. However, the Resolution Plan of Scatec Solar Netherlands BV was not considered by the CoC in their commercial wisdom. After due discussion and deliberation, the Resolution Plan received from the Successful Resolution Applicant was approved with 100 % voting share by the CoC in its 26th meeting held on February 29, 2022.
- Pursuant thereto, the Resolution Professional filed a plan Approval Application, i.e., I.A. No. 83 of 2022. However, vide Order dated November 23, 2022, the NCLT, Allahabad Bench sent the Resolution Plan back to the CoC for reconsideration, observing that certain provisions of the Resolution Plan were not in accordance with the objectives of the Code.
- Subsequently, pursuant to deliberations between the Successful Resolution Applicant and the CoC, the former submitted a clarificatory letter dated January 10, 2023 addressing the concerns raised by the NCLT. Thereafter, the Resolution Plan as clarified in the letter, was put to vote and approved with 100% voting share by the CoC in its 32nd meeting held on January 13, 2023.
- The Successful Resolution Applicant, engaged in the production of electricity from hydropower, is a fully owned subsidiary of Statkraft AS. The Parent Company is a leading company in hydropower internationally and largest renewable energy player of Europe. It is wholly owned by the Norwegian state.
- On approval of the Resolution Plan by the CoC, the Resolution Professional had issued LOI on February 25, 2022 which was accepted by the Successful Resolution Applicant. Further, as per

the terms of RFRP, the Successful Resolution Applicant furnished a performance bank guarantee of INR 20 crore through bank guarantee dated March 01, 2022.

- A perusal of the order of approval of Resolution Plan shows that the Resolution Plan provides for a total payment of INR 180 crore to all the stakeholders as per the waterfall mechanism under Section 53 of the Code. The Successful Resolution Applicant proposes to invest the Upfront Capital Contribution of INR 180 crore within 90 days of approval of the Resolution Plan by the NCLT. The Corporate Debtor will issue equity shares and/or quasi-equity instruments to the Successful Resolution Applicant in consideration for the investment.
- Under the Resolution Plan, certain reliefs, waivers and concessions have been sought in relation to certain investigations, proceedings, suits, claims, disputes, etc. in connection with the Corporate Debtor, which has been granted by the NCLT in terms of the provisions of the Code. With respect to the pending litigation involving the Corporate Debtor, the same would be governed by Section 32A of the IBC.
- Relying on the position laid down by the Supreme Court in **Committee of Creditors of Essar Steels v. Satish Kumar Gupta & Ors**³ and **Jaypee Kensington Boulevard Apartments Welfare Association & Ors v. NBCC (India) Ltd & Ors**⁴, the NCLT Allahabad Bench observed that the power of judicial review conferred on the Adjudicating Authority under Sections 30(2) and 31 of the IBC is limited and the Adjudicating Authority cannot venture into the commercial aspects of the decision of the CoC.
- In view of the abovementioned observations, the NCLT Allahabad Bench held that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and pronounced the Resolution Plan as approved.

Resolution of Anudan Properties Pvt Ltd

- The NCLT, Mumbai Bench-IV, vide an Order dated March 29, 2023 approved the Resolution Plan submitted by KGK Realty (India) Pvt Ltd, the Successful Resolution Applicant, in the CIRP of Anudan Properties Pvt Ltd, the Corporate Debtor.
- Vide Order dated March 15, 2021, the NCLT, Mumbai Bench admitted the Company Petition filed by LICHFL Trustee Pvt Ltd under Section 7 of the Code and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr. Jayesh Sanghrajka as the Interim Resolution Professional. Subsequently, he was confirmed as the Resolution Professional during the 1st CoC meeting held on April 25, 2021.
- The CoC in its 2nd Meeting approved the Form G, which was issued in two newspapers first on June 09, 2021. However, subsequently, the Form G was reissued multiple times to give an opportunity to more Resolution Applicants to submit their Expression of Interest. The final fresh Form G, as approved by the CoC in its 13th meeting was issued on January 28, 2022.
- After issuance of Form G, in terms of Section 25(2)(h) of the IBC read with Regulation 36A (1) of the CIRP Regulations, 2016, three Prospective Resolution Applicants – KGK Realty (India) Pvt Ltd; Ashdan Properties Pvt Ltd and NNP Buildcon Pvt Ltd; and Aanya Real Estate Pvt Ltd – submitted Resolution Plans. All three Resolution Plans were found to be compliant with the code and put to vote. After due discussion and deliberation, the Resolution Plan received from the Successful Resolution Applicant – KGK Realty (India) Pvt Ltd – was approved with 76.35% voting share by the CoC in its 17th meeting.
- On approval of the Resolution Plan by the CoC, in accordance with the terms of RFRP, the Successful Resolution Applicant furnished a performance security of INR 2.5 crore through bank guarantee dated May 10, 2022 issued by ICICI Bank Limited on behalf of KGK Realty (India) Pvt Ltd.
- A perusal of the order of approval of Resolution Plan shows that the KGK Realty (India) Pvt Ltd has agreed to take over the responsibility of completing the project of the Corporate Debtor, i.e., construction of the Thane Project, which will commence from the date of the approval of the Resolution Plan by the CoC, in order to ensure that the homebuyers get their homes in a timely manner. The Resolution Applicant has undertaken to provide the funding for incurring the cost for the project in the form of Interim Finance.
- The Resolution Plan provides for a total payment of INR 5260 lakh to the stakeholders and homebuyers, as financial creditors in class, will be provided their respective units within 5 years of approval of the Resolution Plan by the NCLT.

³ Civil Appeal No. 8766-67 of 2019

⁴ Civil Appeal No. 3395 of 2020

- Relying on the position laid down by the Supreme Court in *Ghanshyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd*⁵, the NCLT Mumbai Bench-IV declared that all claims which are not a part of the Resolution Plan as on the date of its approval shall stand extinguished and all such waivers/concessions/reliefs as expressly provided under the IBC shall be available to the Corporate Debtor.
- In view of the abovementioned observations, the NCLT Mumbai Bench-IV held that the Resolution Plan meets the requirements of Sections 30(2) of the IBC and Regulations 37, 38, 38(1A) and 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and pronounced the Resolution Plan as approved.

Resolution of Hindustan Photo Films Mfg Co Ltd

- The NCLT, Chennai Bench-I, vide an Order dated March 31, 2023 approved the Resolution Plan submitted by Shri M K Rajagopalan, the Successful Resolution Applicant, in the CIRP of Hindustan Photo Films Mfg Co Ltd, the Corporate Debtor.
- The Corporate Debtor was incorporated in 1960 as a public sector enterprise having its registered office at Indu Nagar, Ootacamund, Nilgiris District, Tamil Nadu – 643005. It is a 100% subsidiary of the Union of India through the Ministry of Heavy Industries for the purpose of constructing an industrial plant for the manufacturing of photo films.
- Over time, the Corporate Debtor became financially unsustainable, and a reference was made to the Board for Industrial and Financial Restructuring, which, vide Order dated March 31, 2003 had passed an Order of winding up of the Corporate Debtor. The said Order was forwarded to the Hon'ble High Court of Madras as C.P. No. 114 of 2003.
- Canara Bank, a Financial Creditor of the Corporate Debtor filed C.A. No. 429/2019 before the High Court of Madras seeking the transfer of C.P. No. 114 of 2003 to the Chennai Bench of the NCLT for the initiation of CIRP in respect of the Corporate Debtor. The same was allowed and C.P. No. 114 of 2003 was transferred to NCLT as TCP/1/2021.
- Vide Order dated January 07, 2022, the NCLT, Chennai Bench admitted the Transferred Company Petition and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr. C Prabakaran as the Interim Resolution Professional.
- Pursuant thereto, the Interim Resolution Professional constituted the Committee of Creditors in accordance with Section 21(2) of the Code. In the 2nd meeting of the CoC, it was proposed to appoint CA M Suresh Kumar as the Resolution Professional and the same was confirmed by the NCLT vide its Order dated April 12, 2022.
- After issuance of Form G on June 27, 2022, two Prospective Resolution Applicants submitted their Resolution Plans namely:-(a). Shri M K Rajagopalan; and (b) K R Laminates Pvt Ltd The Resolution Plan submitted by K R Laminates Pvt Ltd was disqualified in the 9th meeting of the CoC held on October 12, 2022, as the same did not comply with the requirements as stipulated in the RFRP.
- The Resolution Plan received from Shri M K Rajagopalan proposed the resolution of the Corporate Debtor by way of a Scheme of Arrangement viz. Demerger wherein 2 of his undertakings namely Kim Ram Exports Pvt Ltd and SGS Land Holdings Pvt Ltd shall take over the freehold land of 4.49 acres along with the superstructures, and the plant and machineries situated at Ambattur and the 12.19 acres of land situated at Ooty respectively.
- After due discussion and detailed deliberation on the Resolution Plan submitted by Shri M K Rajagopalan in the 10th meeting of CoC held on November 11, 2022, the same was approved by the CoC with 77.94% votes. The CoC resolved to approve part sale of the assets of the Corporate Debtor through the Resolution Plan and the remaining assets termed as 'Leasehold Assets' were to undergo liquidation, as no resolution plan was received in respect of the same.
- On approval of the Resolution Plan by the CoC, the Resolution Professional issued LOI on December 15, 2022. Further, the successful Resolution Applicant paid a 10% Performance Bank Guarantee amounting to INR 20 crore.
- A perusal of the order of approval of Resolution Plan shows that the Resolution Plan provides for a total payment of Rs. 100.80 crore to the stakeholders which shall be paid within a period of 45 days from the date of approval of the Resolution Plan by the NCLT. The Successful Resolution Applicant has confirmed that he has sufficient funds to make the payments as per the plan and/or the ability to raise such funds.

⁵ 2022 LiveLaw (SC) 771

- The Resolution Plan provides that the Resolution Professional and the CoC will continue to be in control of the affairs of the Corporate Debtor after the approval of the Resolution Plan until its implementation and the disbursal of monies in accordance with the terms thereof.
- The Scheme of Arrangement proposed in the Resolution Plan under Sections 230 to 232 of the Companies Act 2013 read with Regulations 36B(6A) of the IBBI (Insolvency Resolution Process against Corporate Persons) Regulations, 2016 (CIRP Regulations) is to be treated as an integral part of the Resolution Plan.
- Under the Scheme of Arrangement, two Demerged Undertakings of the Corporate Debtor (defined in Schedule A and B) shall be merged into SGS Land Holdings Pvt Ltd engaged in the business of real estate development and KIM Ram Exports Pvt Ltd engaged in the business of buying, selling, import, manufacture and processing of various goods. As the Demerged Undertakings are located in two different districts of Tamil Nadu (Ootacamund, Dist. Nilgiris and Ambattur, Industrial Estate, Chennai), it is proposed to demerge them and merge them into the two abovementioned entities.
- It is pertinent to note that by way of Notification No. IBBI/2019-20/GN/REG052 dated November 27, 2019, Regulation 37 of the CIRP Regulations, which provides the specifications of a Resolution Plan, was amended to insert Clause (ba) thereto, to imply that a Resolution Plan may also provide for merger, amalgamation and demerger. Thus, the Scheme of Arrangement proposed under the Resolution Plan meets the legal framework.
- Relying on the position laid down by the Supreme Court in *K. Sashidhar v. Indian Overseas Bank*⁶, *Committee of Creditors of Essar Steels v. Satish Kumar Gupta & Ors*⁷ and *Jaypee Kensington Boulevard Apartments Welfare Association & Ors v. NBCC (India) Ltd & Ors*⁸, the NCLT Chennai Bench-I observed that the power of judicial review conferred on the Adjudicating Authority under Sections 30(2) and 31 of the IBC is limited and pronounced the Resolution Plan as approved.

⁶ (2019) 12 SCC 150

⁷ Civil Appeal No. 8766-67 of 2019

⁸ Civil Appeal No. 3395 of 2020



COMPANIES ADMITTED TO INSOLVENCY IN MARCH 2023

Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Haryana Telecom Ltd	Chandigarh	Manufacturing of electronic valves and tubes and other electronic components
2	Sathavahana Ispat Ltd	Hyderabad	Manufacturing of basic iron & steel
3	Airen Metals Pvt Ltd	Jaipur	Manufacturing of basic precious and non-ferrous metals
4	Karaikal Port Pvt Ltd	Mumbai	Building of complete constructions or parts thereof; civil engineering
5	Provogue Personal Care Pvt Ltd	Mumbai	Retail trade
6	Hindustan Photo Films Mfg. Co. Ltd	Chennai	Manufacturing of optical instruments and photographic equipment
7	Anudan Properties Pvt Ltd	Mumbai	Real estate activities with own or leased property
8	L N Industries India Ltd	Hyderabad	Manufacturing of wearing apparel
9	G R Cables Ltd	Hyderabad	Manufacturing of insulated wire and cable
10	Lanco Mandakini Hydro Energy Pvt Ltd	Allahabad	Production, collection and distribution of electricity
11	Malind Properties Pvt Ltd	Bengaluru	Building of complete constructions or parts thereof; civil engineering
12	Pilot Mines & Minerals Pvt Ltd	New Delhi	Mining and quarrying
13	UCAL Auto Pvt Ltd	Chennai	Manufacturing of transport equipment
14	Grand Vacation Pvt Ltd	Mumbai	Supporting and auxiliary transport activities; activities of travel agencies
15	Infra Industries Ltd	Mumbai	Manufacturing of plastic products
16	OCL Iron and Steel Ltd	Cuttack	Manufacturing of basic iron & steel
17	Uniwold Sugars Pvt Ltd	Chandigarh	Manufacturing of food products
18	Sintex-BAPL Ltd	Ahmedabad	Manufacturing of rubber products
19	Hyper Techno Buildmart Pvt Ltd	Jaipur	Real estate activities with own or leased property
20	JBF Petrochemical Ltd	Ahmedabad	Extra territorial organizations and bodies
21	Brys Hotels Pvt Ltd	New Delhi	Hotels
22	Jaypee Infratech Ltd	New Delhi	Building of complete constructions or parts thereof; civil engineering
23	Karthik Alloys Ltd	Mumbai	Manufacturing of electricity distribution and control apparatus
24	K & K Foundry Pvt Ltd	Mumbai	Casting of metals
25	Maini Construction Equipments Pvt Ltd	New Delhi	Manufacturing of special purpose machinery
26	Boulevard Projects Pvt Ltd	New Delhi	Real estate activities on a fee or contract basis
27	Zenith Finesee (India) Pvt Ltd	Kolkata	Manufacturing activities
28	Crown Realtech Pvt Ltd	New Delhi	Manufacturing of basic precious and non-ferrous metals
29	SMS Paryavaran Ltd	New Delhi	Collection, purification and distribution of water
30	Ezeego One Travel & Tours Ltd	Mumbai	Supporting and auxiliary transport activities
31	Aaj Ka Anand Papers Ltd	Mumbai	Publishing
32	Hema Automotive Pvt Ltd	New Delhi	Manufacturing of other fabricated metal products
33	Stan Autos Pvt Ltd	New Delhi	Other business activities
34	Riga Sugar Co Ltd	Kolkata	Manufacturing of other food products
35	J R Foods Ltd	Chennai	Production, processing and preservation of meat, fish, fruit vegetables, oils and fats
36	Samtex Desinz Pvt Ltd	New Delhi	Manufacturing of articles of fur

37	Ind Baraath Thermal Power Ltd	Hyderabad	Production, collection and distribution of electricity
38	Global Fragrances Pvt Ltd	New Delhi	Legal, accounting, book-keeping and auditing activities; tax consultancy; market research
39	Radission Resources Pvt Ltd	Kolkata	Manufacturing of basic iron & steel

Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Ezeego One Travel & Tours Ltd	Mumbai	Auxiliary transport activities
2	Aaj Ka Anand Papers Ltd	Mumbai	Publishing
3	Hema Automotive Pvt Ltd	New Delhi	Manufacturing of other fabricated metal products
4	Stan Autos Pvt Ltd	New Delhi	Other business activities
5	Riga Sugar Co Ltd	Kolkata	Manufacturing of food products
6	J R Foods Ltd	Chennai	Production, processing and preservation of meat, fish, fruit vegetables, oils and fats
7	Samtex Desinz Pvt Ltd	New Delhi	Manufacturing of articles of fur
8	Ind Baraath Thermal Power Ltd	Hyderabad	Production, collection and distribution of electricity
9	Global Fragrances Pvt Ltd	New Delhi	Legal, accounting, book-keeping and auditing activities, tax consultancy and market research
10	Radission Resources Pvt Ltd	Kolkata	Manufacturing of basic iron & steel
11	Regal Pride Trading & Commercial Pvt Ltd	Mumbai	Trading business activities
12	GAMBS India Pvt Ltd	Mumbai	Building of complete constructions or parts thereof; civil engineering
13	Mahabali Innovative Technologies Pvt Ltd	Mumbai	Manufacturing of medical, precision and optical instruments, watches and clocks
14	Shree Gajanan Agro Farms Pvt Ltd	Mumbai	Growing of crops, market gardening, horticulture
15	Raghuleela Infraventures Pvt Ltd	Mumbai	Building completion

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