

Restructuring & Insolvency

Monthly Newsletter

June 2023

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STATUTORY UPDATES

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023

- The Ministry of Corporate Affairs (**MCA**) vide Notification dated May 15, 2023 revised the procedure governing the issuance of notice of a scheme of merger or amalgamation calling for objections or suggestions from the Registrar of Companies (**RoC**) or Official Liquidator and the subsequent confirmation or otherwise of the scheme.
- The said Notification substitutes sub-Rules (5) & (6) of Rule 25 from the earlier Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 issued on December 14, 2016 vide which the procedure for issuing the notice as required under Section 233 (1)(a) of the Companies Act, 2013 was prescribed.
- Sub-Rule (5), which provides the procedure in cases where no objection or suggestion is received from the RoC or the Official Liquidator, has now been amended to stipulate the maximum time limit of 30 days for receiving the suggestions. After this period of 30 days lapses, the Central Government can, within 15 days from the lapse of 30 days, issue a confirmation order for the scheme if it is of the opinion that the scheme is in public interest.
- Sub-Rule (6), which provides the procedure in cases where objections or suggestions are received within the now stipulated timeline of 30 days has been amended to include, in addition to the case where the Central Government is of the opinion that the scheme is not in public interests or in the interest of creditors, the possibility that the Central Government concludes that the objections or suggestions are not sustainable and the scheme is in public interests or in the interest of creditors.
- The Amended sub-Rule (6) provides that in the former case, the Central Government may file an application before the National Company Law Tribunal (NCLT) stating the objections and requesting that the NCLT consider the scheme under Section 232 of The Companies Act, 2013. In the latter case, however, the Central Government is empowered to issue a confirmation order of the scheme within 30 days from the lapse of the abovementioned 30 days period.
- The Amendment further provides that in cases of both the sub-Rules, if the Central Government fails to act within the 60 days period, it shall be deemed that it has no objection to the scheme and a confirmation order is issued accordingly.



RECENT JUDGMENTS

M Suresh Kumar Reddy v. Canara Bank

Supreme Court of India | Judgment dated May 11, 2023 | Civil Appeal No. 7121 of 2022

Background facts

- A Petition was filed by Canara Bank (**Respondent** or **Financial Creditor**) against Kranthi Edifice Pvt Ltd (**Corporate Debtor**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) before the National Company Law Tribunal (**NCLT**) for initiation of the Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor.
- On June 27, 2022 the NCLT admitted the Petition and initiated CIRP proceedings against the Corporate Debtor. M Suresh Kumar Reddy, the suspended director of the Corporate Debtor, appealed against the said order before the National Company Law Appellate Tribunal (**NCLAT**), which was dismissed on August 05, 2022.
- Subsequently, the Appellant filed an Appeal before the Supreme Court contending that based on the decision of the Supreme Court in *Vidarbha Industries Power Ltd v. Axis Bank Ltd*¹, the NCLT was under no obligation to admit the Petition under Section 7 of the IBC even if financial debt and default on the part of the Corporate Debtor were established.

Issue at hand?

- Whether the NCLT has the jurisdiction to refuse to admit an application under Section 7 of IBC despite the establishment of financial debt and default?

Decision of the Court

- The Supreme Court, relying on *Innovative Industries Ltd v. ICICI Bank & Anr*², held that the CIRP proceedings under Section 7 of IBC are triggered where the existence of default is established in respect of the financial debt owed to any Financial Creditor, and not just the applicant Financial Creditor. The NCLT must admit the Petition the moment it is satisfied that a default in payment of financial debt has occurred. The Apex Court clarified that a Section 7 Petition can be rejected only if the debt has not become due and payable.
- Further, while placing reliance on *ES Krishnamurthy & Ors v Bharath HiTecch Builders Pvt Ltd*³ which followed *Innovative Industries*, the Court held that once the NCLT is satisfied that a default has occurred, it is hardly left with any discretion to refuse the admission of the application under Section 7 of IBC. Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default. The only available ground for rejection of an application under Section 7 of the IBC is when the NCLT finds that there is debt but the same has not become due and payable.

HSA Viewpoint

The Supreme Court in this decision reaffirms the position of law as held in the relevant judgements of *Innovative Industries Ltd v. ICICI Bank & Anr* and *ES Krishnamurthy & Ors v Bharath HiTecch Builders Pvt Ltd*. The only ground of rejection of application under Section 7 of IBC when debt has not become due and payable was reinforced in the present case. The Court further clarified the position of *Vidarbha Industries Power Ltd v. Axis Bank Ltd* to hold relevant to the facts of that particular case which does not hold a contrary view to the significant judgement of *Innovative Industries*, thereby significantly diluting the principles laid down in the *Vidarbha case*.

¹ Civil Appeal No. 4633 of 2021

² Civil Appeal Nos. 8337-8338 of 2017

³ Civil Appeal No. 3325 of 2020

- The Supreme Court further pointed out that it was clarified in the order in review that the decision in *Vidarbha Industries Power Ltd v. Axis Bank Ltd* was in the facts of that particular case and the same cannot be read as a taking a contrary view to *Innoventive Industries and ES Krishnamurthy*.
- In view of the above, the Supreme Court dismissed the Appeal to hold that the Corporate Debtor had committed default due to non-payment of dues to the Respondent Bank.

Kapil Wadhawan v. Piramal Capital & Housing Finance Ltd & Ors

National Company Law Appellate Tribunal, Principal Bench, New Delhi | Order dated May 15, 2023 | Company Appeal (AT) (Ins) No. 437 of 2023

Background facts

- This Appeal was filed against the Order dated February 02, 2023 passed by the NCLT, Mumbai in various IAs in the CIRP of Dewan Housing Finance Corporation Ltd (**DHFL** or **Corporate Debtor**). Vide the said order, the NCLT Mumbai allowed the applications filed by Piramal Capital & Housing Finance Ltd, the Successful Resolution Applicant (**Piramal** or **SRA**) and substituted the SRA in Avoidance Applications in the place of the administrator of the Corporate Debtor.
- The Impugned Orders allowed the SRA to prosecute the Avoidance Applications filed by the administrator of the Corporate Debtor pursuant to the SRA taking over the management of the Corporate Debtor's affairs following the NCLT's approval of the Resolution Plan submitted by the SRA vide Order dated June 07, 2021.
- The Resolution Plan submitted by the SRA and approved by the NCLT contained a clause (Clause No. 2.13.2) which provided that the SRA will pursue Avoidance Applications preferred by the administrator subsequent to the NCLT's approval of the Resolution Plan and the proceeds thereof would be distributed to the creditors.
- Relying on the said clause, the NCLT, Mumbai Bench allowed the IAs filed by the SRA. Aggrieved by the Orders, the ex-promoter of the Corporate Debtor challenged the same by filing the present Appeals before the NCLAT.

Issues at hand?

- Whether a Resolution Plan can empower the successful Resolution applicant to prosecute Avoidance Applications subsequent to the plan being approved by the NCLT?
- Whether Avoidance Applications filed subsequent to the approval of the Resolution Plan by the CoC can be pursued?

Decision of the Tribunal

- Relying on the scheme of Sections 25(2)(j), 26 and 36 of the IBC, the NCLAT observed that Avoidance Applications are distinct from the proceedings of the CIRP and hence, the conclusion of the CIRP flowing from the approval of a Resolution Plan does not render Avoidance Applications infructuous.
- This conclusion is in line with the Division Bench judgment of the Delhi High Court in *TATA Steel BSL Ltd v. Venus Recruiter Pvt Ltd & Ors*⁴ wherein the High Court had held that while the RP becomes functus officio upon the conclusion of the CIRP, the same is not applicable to avoidance applications.
- The NCLAT clarified that Sections 43, 45 and 66 of the IBC read with Regulation 35A of the CIRP Regulations make it imperative that the avoidance application must be filed by the RP. This requirement was satisfied in this case, as all Avoidance Applications had been filed by the administrator/RP.
- The NCLAT referred to Regulation 38(2)(d) of the CIRP Regulations inserted by Notification dated June 14, 2022, which provides that the Resolution Plan should specify the manner in which the Avoidance Applications will be pursued and the proceeds therefrom distributed subsequent to the approval of the plan.
- While noting that the said amendment to Regulation 38(2)(d) is applicable prospectively, to Resolution Plans submitted after its insertion, the legislative intent thereunder is clarificatory of the position of law. As the Resolution Plan in the present case specifically empowered the SRA to pursue the avoidance applications, the NCLAT held the said provision to be binding on all parties, including the erstwhile administrator.
- The NCLAT also rejected the submission made on behalf of the Appellant regarding the non-maintainability of the Avoidance Applications filed subsequent to the CoC's approval of the Resolution Plan as being delayed. The NCLAT noted that the timeline for filing Avoidance

HSA Viewpoint

In upholding the provision in the Resolution Plan which allowed the SRA to prosecute Avoidance Applications subsequent to the approval of the plan by the NCLT, the NCLAT has ruled in line with the objects and purpose of the 2022 amendment to the CIRP Regulations. While recognizing that the plan in the case at hand was submitted and even approved prior to the amendment, the NCLAT held that the plan follows the spirit of the amendment and implemented the same.

⁴ (2023) SCC OnLine Del 155

Applications under Regulation 35A has been held to be directory and that any application filed within reasonable time can be entertained.

- In view of the above, the NCLAT dismissed the present Appeal and upheld the order of the NCLT, Mumbai Bench allowing Piramal, the SRA to pursue the avoidance applications.

Indiabulls Asset Reconstruction Co Ltd v. Ram Kishore Arora

Supreme Court of India | Judgment dated May 11, 2023 | Civil Appeal No. 5941 of 2022 & No. 1975 of 2023

Background facts

- Two Appeals were filed by Union Bank of India and Indiabulls Asset Reconstruction Company Ltd (**Appellants or Financial Creditor**) against the Order dated June 10, 2022 passed by National Company Law Tribunal (**NCLT**), Principal Bench, New Delhi. By the Order Impugned, the NCLAT upheld the NCLT's admission of the application under Section 7 of the IBC and issued directions for a project-wise insolvency process of Supertech Ltd (**Corporate Debtor**).
- The Corporate Debtor is a real estate company engaged in construction of projects. It had availed credit facility from Union Bank of India of INR 150 crore for the development of Eco Village-II Project. Subsequently, a second credit facility of INR 200 crore was also availed from Union Bank of India and Bank of Baroda, making the total exposure of Union Bank to INR 100 crore.
- As a result of the Corporate Debtor's default on payment obligations, its account was declared as Non-Performing Asset (**NPA**) on June 20, 2018. Union Bank of India filed an application under Section 7 of the IBC which admitted by the NCLT for the initiation of CIRP of the Corporate Debtor.
- Aggrieved by the Order of the NCLT, the promoter/suspended director (**Respondent No. 1**) of the Corporate Debtor filed an Appeal before NCLAT. The interim directions issued by NCLAT included the constitution of CoC solely for Eco Village Project-II, which was to be completed with assistance of the ex-management of the Corporate Debtor, while the other projects were ordered to be continued as ongoing projects.
- Another Appeal filed by Assets and Care Reconstruction Enterprise Ltd, a beneficiary of a corporate guarantee, challenged the Order dated January 10, 2023 whereby the NCLAT directed the Interim Resolution Professional to call a meeting of only those financial institutions who have lent money to the Corporate Debtor before finalization of the term sheet.

Issue at hand?

- Whether the NCLAT has jurisdiction to limit the CIRP and the constitution of CoC to project-wise resolution for insolvency application under Section 7 of the IBC?

Decision of the Court

- The Supreme Court dealt with the issue of project-wise resolution directed by the NCLAT as a peculiar course adopted by it, to test the success of such a resolution. The Court said that the directions issued by the NCLAT allow all other projects except Eco Village-II as ongoing projects with their construction being conducted in the supervision of the IRP.
- The Court held that constituting the CoC as a whole is likely to impact the ongoing project causing immense hardships and uncertainty for the home buyers. While the other projects are being continued by the IRP with active assistance from the ex-management, the Court held that greater inconvenience will be caused by passing an Interim Order for constitution of CoC with an irreparable injury to the home buyers.
- Further, while placing reliance on the case of Union of India & Ors v. Raj Grow Impex LLP & Ors⁵ the Court emphasized on the elements of balance of convenience and likelihood of irreparable injury as relevant for Courts to consider while exercising their discretion in matters of interim relief. Moreover, it relied on the case of Dorab Cawasji Warden v. Coomi Sorab Warden⁶ to re-emphasize on the relevance of consideration irreparable injury holding that granting of interim relief to a party who fails or would fail to establish their right at the trial may cause great injustice to the party against whom it was granted or alternatively not granting it to a party who succeeds or would succeed may equally cause a grave harm.
- The Supreme Court, in view of the above principles, decided not to alter the direction of the Impugned Order of NCLAT of the project wise resolution of only Eco Village-II. Further, the constitution of CoC for Eco Village-II project as ordered by the NCLAT was upheld in relation to the process of voting beyond which no process could be undertaken without specific Order of the Court.

⁵ Civil Appeal No(S). 2217-2218 of 2021 (Arising out of SLP(C) Nos. 14633-14634 of 2020)

⁶ 1990 Air 867

HSA **Viewpoint**

The Supreme Court in this decision has highlighted the relevance of principles of irreparable harm and grave injustice that may be caused to parties by an Order granting interim relief. The Court delivered a clear position on the Order of NCLAT for the implementation of project-wise resolution, to secure the interest of the home buyers and facilitate the construction process by allowing the continuance of other projects. In so holding, the Supreme Court upholds the spirit of the IBC in providing recovery and rehabilitation to businesses, while ensuring a speedy resolution process in the form of a project-wise resolution.

Union Bank of India v. Dinkar T Venkatasubramanian & Ors

National Company Law Appellate Tribunal Principal Bench, New Delhi | Judgment dated May 25, 2023 |
Company Appeal (AT) (Insolvency) No. 729 of 2020 & IA No. 3961 of 2022

Background facts

- A five-member Bench of the NCLAT was constituted for considering the three questions referred by the three-member Bench vide an Order dated February 09, 2023.
- By way of background, in the CIRP of Amtek Auto Ltd (**Corporate Debtor**) initiated by the admission of a Section 7 application filed by Union Bank of India (**Appellant** or **Financial Creditor**), a Resolution Plan was approved by the CoC on January 11, 2020 with 70% voting share.
- Vide Order dated July 09, 2020, the NCLT approved the Resolution Plan and rejected an application filed by the Financial Creditor seeking certain reliefs. The Financial Creditor preferred an Appeal against the said Order of the NCLT, however, without impleading the CoC. This Appeal filed by the Financial Creditor was partially allowed.
- Aggrieved by the NCLT's Order of rejection, the Financial Creditor preferred an Appeal before the National Company Law Appellate Tribunal (**NCLAT**), however, without impleading the CoC. This Appeal was partly allowed by the NCLAT vide its judgement dated January 27, 2022.
- Thereafter, the Financial Creditor filed a Review Application against the Order dated January 27, 2022, which was dismissed by the NCLAT, holding that a review application is not maintainable before the NCLAT, as the IBC does not contain a provision for a review.
- Finally, the Financial Creditor filed an application for recall of the same order. Before the three-member Bench hearing the Recall Application, conflicting judgments of the NCLAT and the Supreme Court were cited on behalf of parties concerning the power of the NCLAT to recall its judgment. In view thereof, the three-member Bench of the NCLAT referred the matter to a five-member Bench.

Issues at hand?

- Whether the NCLAT has the power to recall its judgment?
- Whether the judgments of the NCLAT in Agarwal Coal Corporation Pvt Ltd v. Sun PaperMill Ltd & Anr⁷ and Rajendra Mulchand Varma & Ors v. KLJ Resources Ltd & Anr lay down that there is no power vested in the NCLAT to recall its judgment?

Decision of the Tribunal

- The NCLAT relied on Rule 11 of the NCLAT Rules, 2016 to elaborate the power to recall its judgment as an 'inherent power' vested in the Tribunal. Further relying on the judgment of the Supreme Court in Harinaagar Sugar Mills Ltd v. Shyam Sunder Jhunjunwala & Ors⁸, the Bench held that while procedures of Courts and Tribunals differ, their functions are not essentially different.
- Considering the powers under Rule 11, the Bench held that as per the said Rule, inherent powers are not conferred but are inherent in nature and allow Courts and Tribunals to rule in the larger interest of justice. However, this inherent power is not to be exercised in a way contravening any express provision of the statute.
- Relying on judgements of the Supreme Court in Budhia Swain & Ors v. Gopinath Deb & Ors⁹ concerning the power of recall; Kapra Mazdoor Ekta Union v. Birla Cotton Spinning & Weaving Mills Ltd & Anr¹⁰ on the power of review; and SERI Infrastructure Finance Ltd v. Tuff Drilling Pvt Ltd¹¹, the five-member Bench held that there is a distinction between review and recall.
- The Bench observed that while the power to review is not conferred upon the Tribunal, the power to recall its judgement is inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Further, the power to recall is not power to rehear the case but can be exercised by the NCLAT when any procedural error is committed while delivering the earlier judgement or on the ground of fraud.
- In view of the above, the five-member Bench of the NCLAT rejected the view taken by the three-member Bench in Agarwal Coal Corporation Pvt Ltd v. Sun Paper Mill Ltd & Anr¹² and Rajendra Mulchand Varma & Ors v. KLJ Resources Ltd & Anr, and categorically ruled that the inherent powers of the NCLAT include the power to recall its own Judgment.

HSA Viewpoint

The NCLAT in this decision reaffirms the inherent power granted to it under Rule 11 of the NCLAT Rules, 2016 to recall a judgement. The expansive powers given to the Tribunal are reinforced through the present decision as the five-member bench rejected the view adopted by the three-member bench to clarify the correct position of law, as laid down by the Supreme Court. It further delivers a clear position on the distinction of the power to review and recall while emphasizing on the inherent nature of recalling a judgement to provide justice to the parties. This judgment of the five-member Bench is likely to open the avenue of recall to litigants approaching the NCLAT as well as the NCLT.

⁷ Company Appeal (AT)(Ins.) No. 412/2019

⁸ AIR 1961 SC 1669

⁹ (1999) 4 SCC 396

¹⁰ (2005) 13 SCC 777

¹¹ (2018) 11 SCC 470

¹² Company Appeal (AT) (Insolvency) No. 412 of 2019

Rohit Nath v. KEB Hana Bank Ltd

High Court of Madras | Judgment dated March 30, 2023 | CRP No. 2513 of 2022 & CMP No. 12925 of 2022

Background facts

- A company named Alectrona Energy Pvt Ltd (**Corporate Debtor**) borrowed a sum of INR 35 crore as working capital demand loan from KEB Hana Bank Ltd (**Respondent**) and further availed a foreign letter of credit of INR 5.40 crore. The company defaulted on its payment obligations and its account was declared as Non- Performing Asset (**NPA**) on August 29, 2018. The Petitioner, Rohit Nath, had executed a personal guarantee in favor of the Respondent bank to secure the payment obligation of the Corporate Debtor.
- On November 15, 2019, the Government of India (**Gol**) issued a notification declaring that the provisions of the IBC in respect of the personal guarantors of Corporate Debtors will come into effect from December 01, 2019. Similarly, the Gol notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019, which also came into effect from December 01, 2019.
- On March 09, 2020, the Respondent filed an application under Section 95 of the IBC before the Debt Recovery Tribunal-II, Chennai initiating the insolvency proceedings against the Petitioner, which was admitted by the DRT. In the meantime, the Petitioner filed a Writ Petition before the Supreme Court, challenging the constitutional validity of the government notification dated November 15, 2019. The said Petition was dismissed by the Supreme Court through its judgment dated May 21, 2021 in *Lalit Kumar Jain v. Union of India*¹³, holding that there is intelligible differentia between individual guarantors and personal guarantors to Corporate Debtors.
- Thereafter, the Petitioner filed a Civil Revision Petition before the Madras HC under Article 227 of Constitution of India challenging the jurisdiction of the DRT to entertain the application, which was also dismissed vide judgment dated July 28, 2021. In the meanwhile, the Respondent Bank filed an application under Section 7 of the IBC before the NCLT, Chennai, which was admitted vide order dated March 01, 2022 and the CIRP of the Corporate Debtor was initiated.
- Simultaneously, the DRT heard the application against the Petitioner and passed a final order under Section 114 of the IBC rejecting the repayment plan of the Petitioner. Consequently, the Respondent Bank filed an application for the commencement of bankruptcy process against the Petitioner. In light of NCLT's admission order in respect of the Corporate Debtor, the Petitioner challenged the maintainability of the bankruptcy proceedings against him before the DRT.
- The Petitioner contended that in light of the pendency of the CIRP in respect of the Corporate Debtor, the bankruptcy proceedings against him must also be transferred to the NCLT. The DRT relied on the judgment of the Supreme Court in Lalit Kumar Jain and rejected the contention of the Petitioner.
- Aggrieved by this order, the Petitioner preferred the present Civil Revision Petition before the Madras HC.

Issues at hand?

- Whether bankruptcy proceedings initiated against a personal guarantor and pending before the Debt Recovery Tribunal must be transferred to the NCLT in view of the subsequent initiation and pendency of the CIRP in respect of the Corporate Debtor?
- Whether NCLT alone has jurisdiction in matters of insolvency resolution and bankruptcy process for personal guarantors (to Corporate Debtors) in view of Section 60(1) of the IBC?
- Whether in view of the filing of the insolvency resolution process against the Corporate Debtor, the pending bankruptcy proceedings against the personal guarantor before the DRT is to be transferred to the NCLT in view of Section 60(3) of the IBC?

Decision of the Court

- The Madras HC, while dismissing the Petition, upheld the DRT's authority to hear and decide the bankruptcy proceedings against the personal guarantors to Corporate Debtors. In its decision, the Madras HC relied on the definition of 'Adjudicating Authority' as per Section 3(1)(a)(ii) of the IBC, which provides that in cases other than Section 60 of the IBC, the DRT shall be the Adjudicating Authority.
- Further referring to the judgment of the Supreme Court in *State Bank of India v. V. Ramakrishnan and Anr*¹⁴, the HC emphasized that the NCLT has exclusive jurisdiction solely for the purpose of Part-II dealing with the insolvency resolution process of corporate persons, and Section 79 of the IBC, which specifies the adjudicating authority for Part-III as the DRT is the provision applicable to personal guarantors.

HSA Viewpoint

The judgment of the Madras HC is pragmatic insofar as it refuses to transfer the already-concluded bankruptcy proceeding against the personal guarantor to the NCLT. In upholding the jurisdiction of the DRT to hear and adjudicate applications against personal guarantors, the HC upholds the letter and spirit of the IBC, to prioritize quick resolution of debt. However, whether DRT's and their judicial officers have been trained and sensitized to deal with personal insolvency proceedings, remains to be seen.

¹³ (2021) 9 SCC 321

¹⁴ (2018) 17 SCC 394

- On the reading of Section 60(3) of the IBC which provides for the transfer of the insolvency resolution process or liquidation or bankruptcy proceeding of a corporate or personal guarantor of the Corporate Debtor to the NCLT which is hearing the CIRP of the Corporate Debtor, the Madras HC employed purposive interpretation to rule that in the present case, the insolvency resolution process as well as the bankruptcy proceeding in respect of the Petitioner had already been concluded and what remained was simply the distribution of the assets of the Petitioner by the Bankruptcy Trustee in accordance with the provisions of the IBC.
- In light of the decision of the Supreme Court in Lalit Kumar Jain, the Madras HC held that the proceedings against the Petitioner were at a completely different stage than the CIRP of the Corporate Debtor and no purpose would be served by transferring the former to the NCLT hearing the latter.



RECENT DEALS

Resolution of Sharon Bio-Medicine Ltd

- The NCLT, Mumbai Bench, vide an Order dated May 17, 2023 approved the Resolution Plan submitted by Innova Captab Ltd, the Successful Resolution Applicant (**SRA**) in the CIRP of Sharon Bio-Medicine, the Corporate Debtor.
- The Corporate Debtor was incorporated in 1989 and is a public limited company listed on the Bombay Stock Exchange as well as the National Stock Exchange. It is engaged in the production of pharmaceuticals intermediaries, active ingredients and final dosages for both domestic and international markets.
- Vide Order dated February 28, 2018, the NCLT, Mumbai Bench admitted the company Petition filed under Section 7 of the Code and ordered the initiation of the CIRP of the Corporate Debtor thereby appointing Mr Dinkar T Venkatasubramanian as the Interim Resolution Professional.
- During the CIRP, the Resolution Plan submitted by Peter Beck and Partner Vermoögensverwaltung Ltd (**Earlier Resolution Applicant**) was approved by the CoC. However, the Earlier Resolution Applicant did not comply with the terms of their Resolution Plan and following several rounds of litigation, the lenders of the Corporate Debtor sought to issue fresh invitation of Expression of Interest (EoI). On a motion of lenders, Mr Pulkit Gupta was appointed as the Resolution Professional and his appointment was confirmed by the NCLT vide order dated June 03, 2022.
- Fresh Form G was issued in three newspapers – Free Press Journal, Navakal and Jansatta on June 10, 2022. Following the issuance of Form G, a total of 34 Prospective Resolution applicants (PRAs) submitted their EoIs. However, pursuant to the timelines specified, only six PRAs – Innova Captab Ltd, Tirupati Medicare Ltd, Sherisha Technologies Pvt Ltd, Mr Sanjay Jain, KLJ Resources Ltd and Consortium of Topnotch Chemicals Pvt Ltd & Swastik Infralogic Pvt Ltd – submitted Resolution Plans.
- Subsequently, out of the six PRAs, only two – Innova Captab Ltd and Tirupati Medicare Ltd – submitted final Resolution Plans, which were both found to be eligible and placed before the CoC for deliberation. After due discussion and deliberation, the Resolution Plan received from the Successful Resolution Applicant – Innova Captab Ltd – was approved with 79.28% voting share by the CoC on November 16, 2022.
- 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 35 crore through bank guarantee.
- A perusal of the order of approval of Resolution Plan shows the shares of the Corporate Debtor are planned to be de-listed in terms of the SEBI (Delisting of Equity Shares) Regulations, 2021. Further, one day after the payment date, the shares of the Corporate Debtor shall be

extinguished and cancelled through capital reduction or selective capital reduction. Thereafter, the SRA will acquire 100% fresh equity of the Corporate Debtor against its infusion of funds.

- The Resolution Plan provides for a total payment of INR 256.36 crore to the stakeholders. An amount of INR 8.89 crore will be paid to workmen and employees as and when due, in addition to the payment of INR 40 lakh to operational creditors. The secured Financial Creditors are assured the entirety of available cash and closing adjustment payment. Unsecured Financial Creditors are guaranteed an amount of INR 2.5 crore.
- Relying on the position laid down by the Supreme Court in *Ghanshyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd*¹⁵, 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 held that the Resolution Plan submitted by the SRA meets the requirements of the IBC and approved the Resolution Plan.

Resolution of Dignity Buildcon Pvt Ltd

- The NCLT, New Delhi Bench-IV, vide an order dated May 17, 2023 approved the Resolution Plan submitted by Experion Developers Pvt Ltd, the Successful Resolution Applicant, in the CIRP of Dignity Buildcon Pvt Ltd, the Corporate Debtor. The Corporate Debtor is engaged in the business of developing commercial towers in Golf Course Extension Road of Gurgaon, Haryana.
- Vide order dated April 24, 2019, the NCLT, New Delhi Bench-IV admitted the Company Petition filed by Sudhir Power Projects Ltd under Section 9 of the Code and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr Pradeep Kathuria as the Interim Resolution Professional.
- Pursuant thereto, the Interim Resolution Professional constituted the Committee of Creditors (CoC), which comprised five Financial Creditors i.e., Experion Capital Pvt Ltd, holding 60% voting share; Alchemist Asset Reconstruction Company Ltd holding 35.4% voting share; Logos Holding Company Pvt Ltd holding 4.1% voting share; Addon Realty Pvt Ltd holding 0.2% voting share; and Rapid Buildwell Ltd holding 0.3% voting share.
- In the first CoC meeting held on May 23, 2019, Mr Chandra Prakash was appointed as the Resolution Professional of the Corporate Debtor. However, vide order dated October 11, 2022 of the IBBI Disciplinary Committee, the registration of the erstwhile RP was suspended and CoC subsequently resolved to appoint Mr Shailendra Ajmera as the Resolution Professional.
- After issuance of Form G, pursuant to the publication of Expression of Interest (EoI) five Prospective Resolution Applicants came forward out of which two withdrew from the process later. Due to the nationwide lockdown declared on March 25, 2020 the process of negotiation came to standstill. Later, on November 20, 2020 the CoC reconvened in its 35th meeting and conducted an open bidding process between four Prospective Resolution Applicants (PRA) who had submitted their revised Resolution Plans.
- It is pertinent to note that the SRA, who had failed to submit its Resolution Plan within the stipulated deadline, filed an application bearing I.A. No 319 of 2021 before the NCLT seeking directions to the RP to place its Resolution Plan before the CoC. Vide its order dated January 21, 2021, the NCLT directed the erstwhile RP to place the Resolution Plan submitted by the SRA before the CoC.
- Consequently, the Resolution Plans received from four PRAs namely Sattva, Dhirs, M3M and Experion (SRA) were put to vote. The first round of voting was concluded on March 8, 2021 and the Resolution Plans submitted by Sattva received 64.64%, with the said plan being approved by all CoC members except Alchemist.
- Followed by several rounds of re-voting and litigation, the final voting on the Resolution Plans was conducted from February 28, 2023 to March 03, 2023, wherein the Resolution Plan of the SRA stood approved by the CoC with 99.73% voting share.
- On approval of the Resolution Plan by the CoC, the RP issued a Letter of Intent dated March 03, 2023, which was accepted by the SRA. Further, in accordance with the terms of RFRP, the SRA furnished a performance bank guarantee of INR 20 crore.
- A perusal of the order of approval of Resolution Plan shows that the Successful Resolution Applicant proposes to make a total payment of INR 450 crore, with a payment of INR 445 crore as upfront payment to secured Financial Creditors and INR 2.5 crore as upfront payment to

¹⁵ Civil Appeal No. 8129 of 2019

unsecured Financial Creditors. The plan also provides for the payment of INR 2.5 crore to the operational creditors of the Corporate Debtor.

- Further, Clause 10.5 of the Resolution Plan provides that any amount received from the successful avoidance of transactions in terms of Sections 43, 45, 47, 49, 50 or 66 of IBC shall be for the benefit of Financial Creditors in proportion to their voting share.
- Relying on the decision of the Supreme Court in *Embassy Property Development Pvt Ltd v. State of Karnataka & Ors*¹⁶, the NCLT directed the SRA to file necessary application before the necessary forum to avail the reliefs and concessions sought as per Clause 9 and Clause 14 of the Resolution Plan.
- Relying on the position laid down by the Supreme Court in the matter of *K Sashidhar v. Indian Overseas Bank*¹⁷ and *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors*¹⁸, the NCLT held that it cannot sit in appeal against the decision of the CoC, and the decision made by CoC is upheld as far as the approval of the Resolution Plan is concerned.
- In view of the abovementioned observations, the NCLT New Delhi Bench-IV approved the Resolution Plan submitted by the SRA.

Resolution of National Steel and Agro Industries Ltd

- The NCLT, Mumbai Bench, vide an order dated May 19, 2023 approved the Resolution Plan submitted by JSW Steel Coated Products Ltd, the Successful Resolution Applicant (SRA), in the CIRP of National Steel and Argo Industries Ltd, the Corporate Debtor.
- Vide order dated April 11, 2022, the NCLT, Mumbai Bench admitted the Petition filed by JM Financial Assets Reconstruction Co Ltd under Section 7 of the Code, ordered for initiation of the CIRP in respect of the Corporate Debtor and appointed Mr Dushyant Dave 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 the sole Financial Creditor i.e., JM Financial Assets Reconstruction Co Ltd In the 1st CoC meeting held on May 11, 2022, the appointment of Mr Dushyant Dave as the Resolution Professional of the Corporate Debtor was confirmed by the CoC.
- Pursuant to the approval of the COC, the Form G was published on 17 June 2022 for inviting the Expression of Interest (Eoi) from Prospective Resolution applicants (PRAs). Consequent thereto, one Resolution Plan was received from JSW Steel Coated Products Ltd, i.e., the SRA, which was opened in the 7th CoC meeting held on September 07, 2022.
- In the 9th COC held October 06, 2022, the Resolution Plan of the SRA was approved by the SRA with 100% voting share. On approval of the Resolution Plan by the CoC, the Resolution Professional had issued LOI on October 07, 2022 which was accepted by the Successful Resolution Applicant. As required under the RFRP, the SRA submitted a sum of INR 100 crore into the account of the sole Financial Creditor, i.e., JM Financial Asset Reconstruction Company Ltd towards performance security.
- The perusal of the Resolution Plan of the SRA shows that the plan provides for the total payment of an amount of INR 621 crore to all the stakeholders of the Corporate Debtor. An amount of INR 612.38 crore is allocated towards the payment of the sole Financial Creditor JM Financial ARC. The remaining 8.61 lakhs is allocated towards the payments to be made to the operational creditors.
- The SRA proposes to infuse funds for an amount of INR 20 crore into the Corporate Debtor by way of equity / quasi equity and/or other securities and/or shareholder debt and / or deposits, third party debt or a combination thereof. Thus, the existing equity and preference shares of the Corporate Debtor will be extinguished and cancelled.
- Relying on the position laid down by the Supreme Court in *K Sashidhar v. Indian Overseas Bank* and *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors* (*supra*) the NCLT Mumbai 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 Mumbai Bench held that the Resolution Plan is in accordance with 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.

¹⁶ Civil Appeal No. 9170 of 2019

¹⁷ Civil Appeal No.10673 of 2018

¹⁸ Civil Appeal No. 8766-67 of 2019

Resolution of Viceroy Bangalore Hotels Pvt Ltd

- The NCLT, Hyderabad Bench-II, vide an order dated May 22, 2023 approved the Resolution Plan submitted by Dharampal Satyapal Ltd, the Successful Resolution Applicant, in the CIRP of Viceroy Bangalore Hotels Pvt Ltd, the Corporate Debtor.
- Vide order dated August 05, 2022, the NCLT, Hyderabad Bench admitted the company Petition filed by Edelweiss Asset Reconstruction Company Ltd under Section 7 of the Code and ordered for initiation of the CIRP of the Corporate Debtor thereby appointing Mr Kuresh Hatim Khambati as the Interim Resolution Professional. Subsequently, he was confirmed as the Resolution Professional during the 1st CoC meeting held on September 20, 2022.
- The CoC of the Corporate Debtor comprised of two Financial Creditors, i.e., Edelweiss Asset Reconstruction Company Ltd having 73.68% voting share and Vistra ITCL Ltd holding 26.31% voting share.
- The Form G, as approved by the CoC was issued on October 04, 2022, with the last date for submitting Expression of Interest (**EoI**) as October 19, 2022, which was subsequently extended to October 31, 2022. In response, EoIs From 41 Prospective Resolution applicants (**PRA**) were received. Only 36 PRAs out of 41 were confirmed as final and out of the 36, 4 failed to submit non-disclosure agreements.
- Ultimately, as on January 31, 2023, eight PRAs submitted Resolution Plans – Dharampal Satyapal Ltd; Edelweiss Alternative Asset Advisors Ltd; GVPR Engineers Ltd; Kailash Darshan Housing Development (Gujarat) Pvt Ltd; Rhythm Hospitality Pvt Ltd; Sankalp Recreation Pvt Ltd & Golbe Ecologistics Pvt Ltd; Sattva Developers Pvt Ltd; and Shanti Hospitality & Mrs Kantadevi Vijay Oswal.
- The Resolution Plans submitted by Edelweiss Alternative Asset Advisors Ltd and Shanti Hospitality were found to be non-compliant with the terms of the RFRP. As such, the remaining six plans, which were found to be compliant, were placed before the CoC. The Resolution Plan received from the Successful Resolution Applicant – Dharampal Satyapal Ltd – was approved with 100% voting share by the CoC.
- 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 30 crore through bank guarantee dated April 17, 2023 issued by Axis Bank in favor of EARCL, the designated lender from the CoC.
- The SRA, Dharampal Satyapal Ltd is a public company belonging to the DS Group, which is a multi-business corporation and a leading FMCG conglomerate which owns and manages prestigious hotels such as Raddison Blu, Crown Plaza, Namah, etc.
- The Resolution Plan provides for a total payment of INR 300 crore to the stakeholders. An amount of INR 290 crore is provided to the secured Financial Creditors and INR 9 crore is provided to Operational Creditors. The Plan further provides that any amount received from the Avoidance Applications shall be for the benefit of assenting Financial Creditors. In addition to the above, any amount received from Kotak Mahindra Bank in favor of the Corporate Debtor in relation to the fixed deposits held by Kotak Mahindra Bank shall also be transferred to assenting Financial Creditors.
- Relying on the position laid down by the Supreme Court in the matter of ***K Sashidhar v. Indian Overseas Bank*** and ***Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors*** (*supra*), the NCLT held that it cannot sit in appeal against the decision of the CoC, and the decision made by CoC is upheld as far as the approval of the Resolution Plan is concerned.
- Further, relying on the position laid down by the Supreme Court in ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd***¹⁹, the NCLT 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 Hyderabad Bench 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.

¹⁹ Civil Appeal No. 8129 of 2019



COMPANIES ADMITTED TO INSOLVENCY IN MAY 2023

Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Swarna Hospital Pvt Ltd	Cuttack	Medical colleges, nursing and pharmacy schools
2	SFS Fire & Security Pvt Ltd	New Delhi	Fire security and solution services
3	Intec India Ltd	New Delhi	Manufacturing of special purpose machinery
4	Dexcel Electronics Designs Pvt Ltd	Bengaluru	Designing and developing customized hardware
5	Mideast Integrated Steels Ltd	New Delhi	Iron ore mining and manufacturing of pig iron
6	Kiran Udyog Pvt Ltd	New Delhi	Wholesale of household goods
7	Mittal Lumber Pvt Ltd	New Delhi	Manufacturing of timber blocks
8	Golden Agrarian Pvt Ltd	Chandigarh	Manufacturing of food grains
9	Jewel Overseas Pvt Ltd	New Delhi	Retail stores
10	Al Saqib Exports Pvt Ltd	New Delhi	Export house
11	Spel Granito Pvt Ltd	Ahmedabad	Manufacturing of vitrified tiles
12	Bellona Estate Developers Ltd	Mumbai	Acquiring, developing and programming real estate
13	UGH Vintage Hospital and Medical research Centre Pvt Ltd	Mumbai	Medical services
14	Envirant Developers Pvt Ltd	Mumbai	Civil engineering
15	United News of India	New Delhi	Media agency
16	Srichaitanya Students Facility Management Pvt Ltd	Mumbai	Hospitality services
17	Skillar Enterprises India Pvt Ltd	New Delhi	Technical, vocational education and training
18	Brewcrafts Micro Brewing Pvt Ltd	Mumbai	Manufacturing of beverages
19	Laxmi Pipes Ltd	Chandigarh	Construction material industry
20	Sadguru Multitrade Pvt Ltd	Mumbai	Trading
21	Asya Infosoft Ltd	Ahmedabad	Strategy and technology implementation services
22	Best News Company Pvt Ltd	New Delhi	News broadcasting services
23	Ambey Vaishno Steels Pvt Ltd	Mumbai	Manufacturing of basic iron & steel
24	Euphoria Technologies Pvt Ltd	Ahmedabad	Recruitment services
25	Bairagra Builders Pvt Ltd	Mumbai	Civil engineering
26	Sterling Oil Resources Ltd	Mumbai	Manufacturing of refined petroleum
27	Paharia Textile Mills Pvt Ltd	Mumbai	Weaving and finishing of textiles
28	RNGLAB (India) Pvt Ltd	Mumbai	Manufacturing of pharmaceuticals
29	Unilec Engineer Ltd	New Delhi	Manufacturing of electrical control panels
30	Tulip Hotels Pvt Ltd	Mumbai	Hospitality services
31	Ecomaister Beads India Pvt Ltd	Cuttack	Manufacturing of iron and steel casting
32	Evenness Business Excellence Services Pvt Ltd	Mumbai	Digital transform business processes
33	Sharp Mint Ltd	New Delhi	Trading in methanol and allied products
34	CDigital Arts & Crafts Pvt Ltd	Mumbai	Art industry
35	Pannageshwar Sugar Mills Ltd	Mumbai	Manufacturing of sugar
36	Deejay Dynamix Explosives Pvt Ltd	Jaipur	Manufacturing of chemical products
37	Mahalaxmi Fasteners Pvt Ltd	Mumbai	Manufacturing of high tensile fasteners

38	Television Home Shopping Network Ltd	Mumbai	E-Commerce marketplace
39	Atharva Polymers Pvt Ltd	Mumbai	Manufacturing of PVC beams
40	Shah Steel Impex Pvt Ltd	Mumbai	Metals and minerals industry
41	H'Reck Engineers Pvt Ltd	Mumbai	Civil engineering
42	Real Value Promoters Pvt Ltd	Chennai	Real estate
43	Go Airlines (India) Ltd	New Delhi	Airline
44	Rajeshwari Infrastructure Ltd	Chennai	Builder
45	MYP Enterprises Ltd	Mumbai	Manufacturing of apparels
46	PME Infratech Pvt Ltd	Mumbai	Manufacturing of electronic components
47	Euro life Healthcare Pvt Ltd	Mumbai	Pharmaceutical
48	9Planets Products Pvt Ltd	Mumbai	Manufacturing of PVC sheets
49	Futurefone Ltd	Mumbai	Transportation
50	Edge Brand Architects (India) Pvt Ltd	Mumbai	Advertising services

Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	BFIP Enterprises Pvt Ltd	Amravati	Construction services
2	JML Marketings Pvt Ltd	Allahabad	Manufacturing of food products
3	KSK Energy Company Pvt Ltd	Hyderabad	Power project development
4	Autocop (India) Pvt Ltd	Mumbai	Manufacturing of car security products
5	Govindparva Agro Products Pvt Ltd	Mumbai	Processing of jaggery powder
6	Consolidated Construction Consortium Ltd	Chennai	Construction services
7	Oren Hydrocarbons Pvt Ltd	Chennai	Research and development
8	Brajesh Construction Pvt Ltd	Mumbai	Construction services
9	Chomu Mahla Toll Road Pvt Ltd	Mumbai	Construction of highways

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