

Restructuring & Insolvency

Monthly Newsletter

October 2023

TABLE OF CONTENTS

STATUTORY UPDATES

- IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023
- IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2023
- IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2023
- Circular on filing of CIRP Forms for the purpose of monitoring CIRPs and performance of Insolvency Professional Entities
- Clarification under Clause (b) of sub-Regulation (2) of Regulation 4 of IBBI (Liquidation Process) Regulations, 2016
- Discussion Paper on appointment of RP, sharing of RP report with the Personal Guarantor and mandating summoning of meeting of Creditors

RECENT JUDGMENTS

- Narayan Mangal v. Vatsalya Builders & Developers Pvt Ltd
- Vijay Kumar Garg, Liquidator of Lance Vidarbha Thermal Power Ltd v. Deputy Commissioner of Customs & Ors
- Ocean Capital Market v. Uday Narayan Mitra, Former RP
- SVA Family Welfare Trust & Anr v. Ujaas Energy Ltd & Ors

RECENT DEALS

- Resolution of Meenakshi Energy Ltd
- Resolution of JMT Auto Ltd
- Resolution of Amrit India Ltd (PPIRP)
- Resolution of GBJ Hotels Pvt Ltd

COMPANIES ADMITTED TO INSOLVENCY IN SEP 2023

- Companies admitted to insolvency
- Companies directed to be liquidated



STATUTORY UPDATES

IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023

- The Insolvency and Bankruptcy Board of India (IBBI) vide notification dated September 18, 2023 notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 (**CIRP Second Amendment Regulations**).
- By way of CIRP Second Amendment Regulations, IBBI has inserted Regulations 2D, 3A and 30B in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) and caused amendment in Regulations 12, 13, 16A, 28, 36B, as detailed below.
- By way of Regulation 2D, IBBI addresses the aspect of limitation at the very inception of the insolvency proceedings by requiring the Creditor to submit an affidavit or a similar document detailing the chronology of the debt and default, and explaining why the application is not barred by limitation.
- By way of the Regulation 3A, the IBBI lays down the manner of control and custody to be taken by the Interim Resolution Professional to ensure timely communication of the crucial information in respect of the Corporate Debtor for smooth conduct of Corporate Insolvency Resolution Process (**CIRP**). Regulation 3A(1) provides for the information to be handed over to the Interim Resolution Professional by the promoters or any other person associated with the management of the Corporate Debtor, as the case may be and lays down the guidelines for the manner in which such information is required to be handed over in Regulations 3A(2) to 3A(6). Regulation 3A(7) provides that any application made under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 (Code) must show presence of such asset or record in the notice of requisition and the absence of such asset or record in the list of assets and records taken under custody in terms of Regulations 3A(2) and (3).
- By way of the amendment to Regulation 12, the IBBI seeks to enhance the comprehensiveness and inclusiveness of the claim gathering process and increase the transparency in the management of claims. The above amendments extend the timeline for submission of claim by a Creditor beyond the stipulated timeline of in the public announcement up to the date of issuance of request of Resolution Plans by the Resolution Professional under Regulation 36B of the Code. The amended Regulation cast a mandate on the Creditor to provide reasons for delay in submitting the claim beyond the period of 90 days from the insolvency commencement date. The above amendment is also aimed at reducing the burden on the Adjudicating Authority on account of litigations arising due to rejection of claim on the ground of delay.
- The amendment to Regulation 13 corresponds to the amendment in Regulation 12 of the CIRP Regulations and provides for the manner in which the Interim Resolution Professional/Resolution Professional shall collate and verify claims received after the timeline stipulated in Regulation 12. The above amendment also mandates the Resolution Professional to provide for reasons for rejection of any claim to enhance the transparency and provide clarity to the Creditors whose claims have been rejected.
- By way of the amendment to Regulation 16A, the IBBI has brought about the following:

- Firstly, IBBI clarifies the role of an authorized representative and elaborated his duties under the provisions of the Code. The authorized representative is required to perform a dual role by (a) ensuring that the CoC fulfils all its obligations in terms of his professional expertise and (b) being explicitly responsible to protect the interests of the class of Creditors he represents. The above amendments casts several duties on the authorized representative of a class of Creditors including helping the members understand the issues discussed in the CoC meetings in order to take a considered decision, help the Resolution Professional to increase the marketability of the assets of the Corporate Debtor, evaluate the Resolution Plans, review the minutes of CoC meeting and provide his comments, represent the class of Creditors before the adjudicatory and regulatory authorities, etc. This amendment aims to facilitate the Creditors in a class to have an effective representation in the CoC and take informed decisions.
- Secondly, the IBBI empowers the class of Creditors to replace their authorized representative and provides the manner for appointment of authorized representative.
- Thirdly, the IBBI substitutes the sub-Regulation (8) of Regulation 16A to increase the fee structure of an authorized representative of class of Creditors.
- By way of the amendment to Regulation 28, IBBI imposes a timeline of seven days on both the parties, to inform the event of assignment or transfer of debt to the Interim Resolution Professional or the Resolution Professional, as the case maybe.
- By way of the insertion of Regulation 30B, keeping in view the complexity of several CIRPs, the IBBI empowers the member(s) of CoC to propose and audit of the Corporate Debtor in order to ensure transparency and accountability and the financial soundness of the process.
- By way of the new Section 36B, which is substituted in the place of the earlier provision, IBBI imposes a timeline of five days on the Resolution Professional on issuance of the information memorandum, evaluation matrix and request for Resolution Plans to every resolution applicant in the final list, which was earlier from the issue of provisional list. Accordingly, the model timelines stipulated under Regulation 40A have been amended.

IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2023

- The IBBI vide notification dated September 18, 2023 notified IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2023 (**Model Bye Laws Amendment Regulations**).
- By way of this amendment, IBBI has caused amendment in the para VI and para XI of the Schedule of the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (**Model Bye-Laws Regulations**). Through this amendment, IBBI aims to simplify the process of enrolment and registration by the Insolvency Professionals (IPs) and ensure a simpler, faster and user-friendly process for the applicants. It also ensures transparency, accountability, and faster processing of applications by the Insolvency Professional Agencies (**IPAs**).

IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2023

- The IBBI vide notification dated September 18, 2023 notified IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2023 (**IP Second Amendment Regulations**).
- By way of the above amendment, the IBBI has amended Regulation 5, 6, 7, 8 and 10 of the IBBI (Insolvency Professional) Regulations, 2016 (**IP Regulations**) and has inserted Regulations 10A and 10B in the IP Regulations.
- Through this amendment, IBBI provides for a focused approach and ease out the multiple requirements for entry into the profession and ensures that the applicants are well versed with theoretical and practical aspects and multi-disciplinary skills delivered through the specialized institution, without compromising the quality. IP Second Amendment Regulations also ensures that the knowledge will be updated, practical aspects will be tested, and limitation of objective type question of examination will be mitigated.
- By way of the above amendment, IBBI proposes simplification of enrolment and registration process to ensure a simpler, faster, and user-friendly process for the applicants. This will also reduce duplication of application submission requirements and consequently reduce the number of stages required for registration as an Insolvency Professional (**IP**). By streamlining the administrative process, IBBI also brings in transparency, accountability, and faster processing of applications on the part of Insolvency Professional Agencies (**IPAs**).
- The proposed amendments in the IP Second Amendment Regulations are corresponding to the amendments in Model Bye Laws Regulations and address the procedural gaps in the status of registration of an IP upon suspension of the professional member, surrender of professional

membership with IPA, expulsion of the professional member and upon receipt of intimation of demise/winding up/dissolution of IP. This will bring clarity on the status of professional membership/enrolment and registration and related compliances which are required to be done by the IPs.

- In view of the above amendments, IBBI, by way of IP Second Amendment Regulations have also substituted Form A and the Form AA mentioned in the second schedule of IP Regulations, which can be accessed at [f76838225028debe733984fb02cd2ec3.pdf](https://www.ibbi.gov.in/f76838225028debe733984fb02cd2ec3.pdf) ([ibbi.gov.in](https://www.ibbi.gov.in)).

Circular on filing of CIRP Forms for the purpose of monitoring CIRPs and performance of Insolvency Professional Entities

- Regulation 40B of CIRP Regulations provides for submission of records and information by an Insolvency Professional (IP) to the IBBI for monitoring the processes and performance of IPs on the electronic platform hosted on the website of the IBBI.
- The IBBI vide IBBI (Insolvency Professionals) (Fourth Amendment) Regulations, 2022 dated September 28, 2022 allowed the insolvency professional entities (IPEs) to get enrolled, registered and act as IPs for conducting the insolvency processes under the Code. However, the facility for submitting the CIRP Forms in accordance with Regulation 40B was not made available to the IPEs acting as IPs and hence, these IPEs were unable to submit the relevant CIRP Forms on the website of the IBBI for the processes/assignments handled by them.
- By way of this Circular, the facility for submitting the CIRP Forms has been now extended to IPEs acting as IPs also. These IPEs shall access the platform with a unique username and password provided by the IBBI and authorize an IP handling the process to upload/submit the CIRP Forms. Thereafter, the authorized IP shall submit the CIRP Forms along with relevant information and records through his username and password as provided to him in capacity of individual IP.
- The Circular also clarifies that in view of the facility being introduced now, CIRP Forms filed till September 30, 2023 shall not attract any fee as provided under Regulation 40B of the CIRP Regulations. Thereafter, it shall attract fee as specified in sub-Regulation (4) of Regulation 40B of the CIRP Regulations.
- The Circular further clarifies that the contents of Circular no. IBBI/CIRP/023/2019 dated August 14, 2019, Circular no. IBBI/CIRP/41/2021 dated March 18, 2021 and Circular no. IBBI/CIRP/42/2021 dated July 20, 2021, which facilitates submission of records and information by IPs, shall now apply to all the assignments handled by IPRs acting as IPs.

Clarification under Clause (b) of sub-Regulation (2) of Regulation 4 of IBBI (Liquidation Process) Regulations, 2016

- Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016 (**Liquidation Regulations**) provides for fee payable to a Liquidator. Such fee is decided either by the Committee of Creditors of the stakeholders' consultation committee, as the case maybe. In the event the fee is not fixed by the CoC or the SCC, Regulation 4(2)(b) provides that Liquidator shall be entitled to a fee as a percentage of the amount realized net of the other liquidation costs, and of the amount distributed, for the balance period of liquidation, as mentioned therein.
- By way of the Circular, IBBI aims to remove any ambiguity in interpretation of the terms mentioned in Regulation 4(2)(b) of the Liquidation Regulations and clarifies as under:
 - The term 'amount realized' shall mean amount realized from assets other than liquid assets such as cash and bank balance including term deposit, mutual fund, quoted share available on start of the process after exploring compromise and arrangement, if any.
 - The term 'other liquidation cost' in Regulation 4(2)(b) of the Liquidation Regulations shall mean liquidation cost paid in priority under Section 53(1)(a), after excluding the Liquidator's fee.
 - The term 'Amount distributed to stakeholders' shall mean distributions made to the stakeholders, after deducting CIRP and liquidation cost.
 - The term 'amount of realization/distribution' shall mean cumulative value of amount realized/distributed which is to be bifurcated in various slabs as per column 1 and thereafter the same is to be bifurcated into realization/distribution in various periods of time and then corresponding fee rate from the table is to be taken.
- As regards the period for calculation of fee, IBBI has clarified that Exclusion for purpose of fee calculation is to be allowed only when the same has been explicitly provided by the Hon'ble NCLT/NCLAT or any other Court of law and will operate only for the asset which could not have been realized during the excluded period.
- The IBBI further clarifies that in cases where excess Liquidator's fee is returned and distributed on or before October 31, 2023 no disciplinary proceedings will be initiated on the ground that the excess fee was charged and has now been returned.

Discussion Paper on appointment of RP, sharing of report prepared by the RP with the Personal Guarantor and mandating summoning of meeting of the Creditors

- The IBBI vide Discussion Paper (**Paper**) dated September 27, 2023 proposes to address the following three issues:
 - **Appointment of Resolution Professional (RP) in the insolvency resolution process of Personal Guarantors (PGs) to Corporate Debtors (CDs):** Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (PGCD Regulations) provides for eligibility of a Resolution Professional. Sub-Regulation (1)(a) of Regulation 4 provides that an insolvency professional (IP) shall be eligible to be appointed as Resolution Professional (RP) if he is independent of the Personal Guarantor (PG). Explanation to Regulation 4(1) gives several instances where the RP is considered independent of the PG. One of the clauses in the explanation specifies that the IP shall be treated as independent of the PG if he has not acted or is not acting as Interim Resolution Professional (IRP), RP or Liquidator during the corporate insolvency resolution process (CIRP) or liquidation process of the Corporate Debtor (CD), as the case may be.

However, IBBI notes that there are no plausible reasons for inferring any possible conflict of interest between the PG and the IP running the insolvency processes of the CD for which he is a PG. In fact, the interrelatedness and close proximity of PGs and CDs would justify that the same IP may be appointed to run both the processes. As the IP in the CIRP or liquidation process would be better placed with respect to the information of the CD as well as the PG, his appointment in the PG matter may expedite, restructure and maximize the assets of CD and to discharge the PG of his liability. In fact, Section 60(2) of the Code provides for the same NCLT bench to deal with the case of CD and its PG. So, the aspect of increased efficiency due to better coordination has been given due weightage wherein the same bench hearing the matters of the CD and its PG is envisaged.

IBBI has therefore proposed that The bar provided under clause (i)© of Explanation to sub-Regulation (1) of Regulation 4 of the PGCD Regulations may be omitted. This will enable the Creditors of the CD to appoint the IRP/RP/Liquidator of the CD as RP in the PG matter for enhanced harmonization of both the processes. Even in the case of replacement of the IRP/RP/Liquidator of the CD, the CoC in its commercial wisdom may appoint a common IP in both the processes.

- **Sharing of report prepared by the RP under Section 99 of the Code with the PG and the Creditors:** Sub-Section (10) of Section 99 mandates the RP to share a copy of the report to the Debtor or the Creditor, as the case may be. Therefore, the provision empowers the Debtor or the Creditor to receive a copy of the report prepared by the RP under sub-Section (7) of Section 99 of the Code. Stricto sensu, interpretation of sub-Section (10) of Section 99 may mean that the RP shall give the copy of the report to either the Debtor or the Creditor, as the case may be. In other words, the RP shall share the copy of the report to the Debtor when the application is filed by the Debtor and the copy of the report will be shared with the Creditor when the application is filed by the Creditor.

In order to ensure that Debtor and the Creditor are well-informed about the evaluation and recommendations made by the RP, and to promote transparency and informed decision-making, IBBI has proposed that the copy of report under Section 99 be provided to both the parties.

- **Mandating summoning of meeting of the Creditors under Section 106 of the Code in case of insolvency resolution process of PGs to CD:** A PG submits a repayment plan under Section 105 to the RP. Subsequently, the RP assesses the viability of the repayment plan and compiles a report on the payment proposal. Along with the report, the RP recommends the calling of the meeting of the Creditors, if necessary. Where the RP recommends that meeting of Creditors is not required to be summoned, the RP is required to state the reasons for the same. While the provision was intended to provide speedy resolution of matters in low-value cases, it is felt that the meeting of the Creditors should be necessary in the case of PGs as such cases are complex in comparison to other cases of individual insolvencies.

Therefore, the IBBI proposes to mandate the convening of a meeting of Creditors in all PG insolvency matters, irrespective of the amount defaulted. This approach ensures that the collective voice of Creditors is factored into the resolution process, providing a more holistic perspective on the repayment plan. By making the meeting of Creditors mandatory, the proposed amendment facilitates the active involvement of Creditors in the resolution process, fostering a sense of ownership and collaboration among stakeholders. This move aligns with the broader objective of promoting a robust and comprehensive framework for resolving financial distress in a manner that is both efficient and just.



RECENT JUDGMENTS

Narayan Mangal v. Vatsalya Builders & Developers Pvt Ltd

National Company Law Appellate Tribunal, New Delhi | Judgment dated August 18, 2023 | IA No. 1666 of 2023 in Company Appeal (AT) (Insolvency) No. 294 of 2023

Background facts

- This appeal is filed against the order dated January 09, 2023 passed by National Company Law Tribunal, Mumbai (**NCLT**) rejecting a Section 7 application filed allegedly by a Financial Creditor, Narayan Mangal (**Appellant**) for initiating Corporate Insolvency Resolution Process (**CIRP**) against Vatsalya Builders Pvt Ltd (**Corporate Debtor**).
- The Appellant claims to be a Financial Creditor of the Corporate Debtor for a debt of INR 1,00,59,922, which includes principal amount of INR 65,00,000 and interest of INR 35,59,922.
- The NCLT rejected the application filed under Section 7 of the Code stating that the Section 7 application filed by the Appellant is not maintainable and is liable to be dismissed as it was filed below the threshold limit as per the Notification issued by the Ministry of Corporate Affairs vide Notification dated March 24, 2020.
- Aggrieved by this order, the Appellant preferred the Company Appeal (AT) (Insolvency) No. 294/2023 before the National Company Law Administrative Tribunal (**NCLAT**) on the ground that the NCLT failed to provide for any reason as to why the threshold is not fulfilled in the application filed under Section 7 of the Code.
- The Respondent/Corporate Debtor submitted that the interest calculated by the Appellant includes the period from April 14, 2020 to March 14, 2021, which is covered by Section 10A and therefore, the interest accruing during this period could not have been added in the Section 7 application filed before the NCLT.

Issue at hand?

- Whether the interest accrued during the period of CIRP suspension as per Section 10A of the Code, is to be excluded while computing the threshold of INR 1,00,00,000 under Section 4 of the Code?

Decision of the Tribunal

- The NCLAT noted the object and purpose of Section 10A, as explained in the ordinance by which Section 10A was brought into force as well as the judgement dated February 09, 2021 passed by the Apex Court in **Ramesh Kymal v. Siemens Gamesa Renewable**¹.
- The Tribunal observed that Section 10A provides that no application/proceedings under Sections 7, 9 and 10 are to be initiated for a default which is committed during Section 10A period. Thus, what is barred, is the initiation of proceedings when Corporate Debtor commits default in

^{HSA} **Viewpoint**

This ruling by NCLAT upholds the very purpose of insertion of Section 10A in the Code, the same being the disruption of normal business operations caused due to lockdown on account of Covid-19 and ensures that a defaulter, whose debt has become due and payable even prior to the imposition of lockdown, does not escape its liability under the garb Section 10A.

¹ Civil Appeal No. 4050 of 2020

Section 10A period. If the default is committed prior to Section 10A period and continues in the Section 10A period, the initiation of proceeding is not barred. The NCLAT also took note of the judgement dated August 18, 2023 passed by the Tribunal in *Raghavendra Joshi vs. Axis Bank Ltd*² wherein the NCLAT held that the benefit under Section 10A can be claimed by the application only when there is a clear default during the prohibited period.

- The NCLAT after taking note of the aforesaid held that if the default is committed prior to Section 10A period and continues during the prohibited period under Section 10A, there is no prohibition for initiation of proceedings under Section 7 of Code and therefore, liability to pay interest for default committed prior to Section 10A period continues and is not obliterated by Section 10A.
- Therefore, the NCLAT allowed the appeal and set aside the order dated January 09, 2023 passed by the NCLT.

Vijay Kumar Garg, Liquidator of Lance Vidarbha Thermal Power Ltd v. Deputy Commissioner of Customs & Ors

National Company Law Appellate Tribunal, Chennai Bench | Order dated August 18, 2023 | Company Appeal (AT)(Ins.) No. 259 of 2023

Background facts

- This appeal is preferred by the Liquidator (**Appellant**) of Lance Vidarbha Thermal Power Ltd (**Corporate Debtor**) against order dated June 15, 2023 passed by the National Company Law Tribunal, Hyderabad Bench (**NCLT**) whereby the NCLT has rejected the application filed by the Liquidator and allowed invocation of Bank Guarantee (**BG**) during the moratorium under Section 14 of the Code.
- The Corporate Debtor imported materials from China for the purposes of setting up a power project in Maharashtra. The project was accorded the status of Provisional Mega Power Project was allowed to import material at zero import duty on a condition that Corporate Debtor had to furnish security in the form of Fixed Deposit Receipts(s) (**FDR**) for an amount equal to Customs/Excise Duty payable. After the Project acquires the status of Final Mega Power Project, the securities submitted in the form of BG and FDR shall be returned to the Corporate Debtor.
- The bond of INR 2160 crore and a BG of INR 10 crore issued by the Punjab National Bank were executed for the purpose of registering the contract in terms of the Project Import Regulations, 1986 and Customs Tariff Act, 1975 with the customs authorities. Later, BGs were also issued by the banks when the imported materials were released from Customs Private Bonded Warehouse without payment of requisite Import/Customs Duty.
- Subsequently, Corporate Debtor imported part of the material and furnished a BG in favor of Deputy Commissioner of Customs. Some more material remained at the port as Corporate Debtor could not furnish BG in lieu of payment of Customs Duty. Deputy Commissioner filed its claim pertaining to differential duty plus interest related to the materials.

Issue at hand?

- Whether the BGs and FDRs deposited by the Corporate Debtor in lieu of materials received at the port and further released by the customs, be returned to the Corporate Debtor/Liquidator?

Decision of the Tribunal

- The NCLAT noted that invocation of BG is not about recovery of any claim by the customs authorities, but is about revocation of surety provided by the Corporate Debtor to the customs authorities in the form of FDRs and BG.
- The NCLAT while relying on the judgement passed by Supreme Court in *State Bank of India v. V Ramakrishnan & Anr*³ and *Bharat Aluminium Co Ltd v. JP Engineers Pvt Ltd & Anr*⁴ held that BG can be invoked even during moratorium period as per Section 14 of Code.
- The NCLAT reiterated the point of view by referring to the excerpts of the two judgments i.e. 'the assets of the surety are separate from those of the Corporate Debtor, and proceedings against the Corporate Debtor may not be seriously impacted by the actions against assets of third party like surety.'
- BG can be invoked even during moratorium period issued under Section 14 of the IBC in view of the amended provision under Section 14(3)(b) of the IBC.'

HSA **Viewpoint**

The NCLAT has arrived at this ruling by distinguishing the BG given to the Customs Department as a third-party asset instead of an asset of the Corporate Debtor, which are protected under Section 14 of the Code.

² Company Appeal (AT)(Ins.) No. 914 of 2023

³ Civil Appeal No. 3595 of 2018 with Civil Appeal No. 4553 of 2018

⁴ CA(AT)(Insolvency) No. 759 of 2020

Ocean Capital Market v. Uday Narayan Mitra, Former RP

National Company Law Appellate Tribunal, Principal Bench, New Delhi | Judgment dated August 09, 2023 | Company Appeal (AT) (Ins.) No. 514 of 2023

Background facts

- This appeal has been filed by the Successful Resolution Applicant, Ocean Capital Market (**Appellant**) of ARSS Infrastructure Projects Ltd (**Corporate Debtor**) against order dated April 18, 2023 passed by the National Company Law Tribunal, Cuttack Bench (**NCLT**) rejecting the Resolution Plan submitted by the Appellant while allowing the objections raised by the dissenting financial creditors.
- The Adjudicating Authority took a view that the Resolution Plan which provides for assignment of securities of Dissenting Financial Creditors to the Resolution Applicant is contrary to provisions of Section 128 of the Contract Act, 1872. Pertinently, the finding was given by the NCLT despite taking note of undertaking dated February 20, 2023 given by the Appellant to the effect that the securities of the Dissenting Financial Creditors shall not be assigned and they shall be allowed to retain their securities.
- Being aggrieved by the order of the NCLT, the Successful Resolution Applicant has filed this appeal.

Issue at hand?

- Whether the Resolution Plan duly approved by CoC with requisite majority and subsequently modified by an addendum for the benefit of the Dissenting Financial Creditors, is required to be considered by CoC in its entirety?

Decision of the Tribunal

- The NCLAT observed that the Resolution Plan once having approved by the CoC with vote share of 76.67%, for the purpose of this case, ends of justice be served in permitting the Successful Resolution Applicant to place an Addendum to the Resolution Plan before the CoC incorporating the condition as given in the Affidavit dated February 20, 2023. The Addendum be placed before the CoC for approval by the Resolution Professional and in event, the Addendum is approved, the Addendum be placed before the NCLT for consideration.
- The NCLAT held that there is no lack of jurisdiction in the Adjudicating Authority to remit the plan for reconsidering the amendment which the Successful Resolution Applicant himself was requesting to be carried out.
- Therefore, the NCLAT set aside the order passed by the NCLT and observed that the Appellant, himself, having submitted the undertaking, the NCLT ought not to have rejected the Resolution Plan and accepted the request of the Dissenting Financial Creditor, but rather, should have remitted the plan to the CoC for reconsideration.
- The NCLAT directed the Appellant to submit the Addendum within two weeks which would then be placed before the CoC for consideration, which should be completed within four weeks. If the CoC approves the Addendum, it would be submitted to the NCLT for further consideration.

HSA **Viewpoint**

In the above case, the NCLAT attends to achieve the very purpose and objective of resolution of a Corporate Debtor under the Code. This ruling reaffirms the objective of resolution and assures that liquidation is the last resort.

SVA Family Welfare Trust & Anr v. Ujaas Energy Ltd & Ors

National Company Law Appellate Tribunal, Principal Bench, New Delhi | Judgment dated August 21, 2023 | Company Appeal (AT) (Insolvency) No. 266 of 2023

Background facts

- This appeal is filed by the Successful Resolution Applicant, SVA Family Welfare Trust and M&B Switchgears (**Appellant**) against the order dated January 06, 2023 passed by the National Company Law Tribunal, Indore (**NCLT**) rejecting the Resolution Plan submitted by the Appellant.
- The Resolution Plan submitted by the Appellant had been approved by the Committee of Creditors (**CoC**) with a majority of 78.04% on August 30, 2021. Under the said Resolution Plan, the Appellant has inter alia proposed an amount of INR 45 crore towards the value of Corporate Debtor and a sum of INR 23.81 crore towards the release of personal guarantees. In terms of the Resolution Plan, the personal guarantees are to be extinguished after paying due compensation to the Financial Creditors.
- Bank of Baroda (**BoB**) holding 5.83% voting share in the CoC, objected to the Resolution Plan on the ground that the Resolution Plan cannot contain a provision by which personal guarantees given in favor of BOB stand extinguished.
- The NCLT vide its order dated January 06, 2023, rejected the Resolution Plan submitted by the Appellant and held that the CoC cannot extinguish the right of the Secured Creditor to proceed against the Personal Guarantor of the Corporate Debtor under the garb of its commercial

wisdom. Such provision in the Resolution Plan is not only prejudicial to the right of such Secured Creditor but also in contravention of Section 30(2)(e) of the Code.

Issue at hand?

- Whether a personal guarantee given to a financial creditor can be extinguished under a Resolution Plan?

Decision of the Tribunal

- The National Company Law Appellate Tribunal (NCLAT) noted the provisions of the Insolvency and Bankruptcy Code, 2016 (Code) and the findings of the Supreme Court in *Lalit Kumar Jain v. Standard Chartered Bank & Ors*⁵, wherein it was observed that the members of the erstwhile Board of Directors, who are often Guarantors, are vitally interested in a Resolution Plan and as such Resolution Plan then binds them. It was also observed that such plan may scale down the debt of the Principal Debtor, resulting in scaling down the debt of the Guarantor as well. The Supreme Court then, in *Lalit Kumar Jain v. Union of India & Ors*⁶ held that sanction of a Resolution Plan does not per se operate as a discharge of the Guarantor's liability and that approval of a Resolution Plan does not ipso facto discharge a Personal Guarantor.
- The NCLAT after noting the above judgements held that the use of expressions 'per se' and 'ipso facto' clearly indicate that by approval of the Resolution Plan, Personal Guarantors are not per se and ipso facto discharge from its obligation which may arise of the guarantee given to the Financial Creditor. The use of above expressions conversely indicates that there may be situations and circumstances, for example, relevant clauses in the Resolution Plan by which Personal Guarantors may be discharged. The NCLAT held that the judgment of the Supreme Court in the abovementioned cases cannot be read to mean as laying down law that personal guarantee never can be discharged in a Resolution Plan.
- The NCLAT noted the contents of the Resolution Plan which clearly provided for a separate value for the security to creditors by way of personal guarantee and upheld the decision of CoC to accept the value for relinquishment of personal guarantee as a commercial decision of CoC.
- The NCLAT set aside the order dated January 06, 2023 passed by the NCLT and held that the NCLT committed error in rejecting the Application for approval of the Resolution Plan on the ground that plan could not have contained a provision for extinguishment of personal guarantee of the Personal Guarantors, when the Plan allocates a value for extinguishment of personal guarantee which has been accepted by the Financial Creditors by a vote share of 78.04%.

HSA Viewpoint

By way of this judgement, the NCLAT has upheld the supremacy of the commercial wisdom of CoC and upheld their commercial decision to assign a value to the relinquishment of their rights to pursue the personal guarantees.

⁵ Civil Appeal No. 8430 of 2018

⁶ Transferred Case (Civil) No. 245 of 2020



RECENT DEALS

Resolution of Meenakshi Energy Ltd

- The National Company Law Tribunal, Hyderabad Bench-II (**NCLT**), vide an order dated August 10, 2023 has approved the Resolution Plan submitted by Vedanta Ltd, the Successful Resolution Applicant (**SRA**), in the CIRP of Meenakshi Energy Ltd, the Corporate Debtor (**Corporate Debtor**).
- Vide order dated November 07, 2019, the NCLT, Hyderabad Bench admitted the Company Petition (IB) No. 184 of 2019 filed by State Bank of India under Section 7 of the Code and ordered for initiation of the CIRP of the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 (**Code**).
- Mr. Ravi Sankar Devarakonda was appointed as the Interim Resolution Professional for the Corporate Debtor and was subsequently, was confirmed as the Resolution Professional (**RP**) during the first CoC meeting held on December 05, 2020.
- Pursuant to the process envisaged under the Code, Resolution Plans were received from the SRA, Jindal Power Ltd and Consortium of Prudent ARC Ltd and Vizag Minerals and Logistics Pvt Ltd and the committee of creditors (**CoC**) resolved to undertake the inter-se challenge process for value maximization of the Corporate Debtor.
- Pursuant to the challenge process, the SRA improved the financial offer from INR 650 crore to INR 1440 crore, however the same was not considered by the CoC since all the resolution applicants were to be given equal opportunity.
- The Resolution Plans were then put to vote and the Resolution Plan submitted by the SRA, Vedanta Ltd was approved by a majority of 92.61% on January 17, 2023. On approval of the Resolution Plan by the CoC, in accordance with the terms of RFRP, the SRA furnished a Performance Bank Guarantee of INR 25 crore.
- Relying on the position laid down by the Supreme Court in *K Sashidhar v. Indian Overseas Bank*⁷ and *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors*⁸, the NCLT observed that the power of judicial review conferred on the Adjudicating Authority under Sections 30(2) and 31 of the IBC is limited and it does not extend to modifying the Resolution Plan which the CoC, in their commercial wisdom, have approved.
- The NCLT therefore, after satisfying itself that the Resolution Plan is in compliance with Section 30(2) read with Section 53 of the Code and does not contravene any provision of the law and noting that the SRA is eligible under Section 29A of the Code, approved the Resolution Plan submitted by the SRA, as approved by the CoC in its commercial wisdom.

⁷ Civil Appeal No. 10673 of 2018

⁸ Civil Appeal No. 8766-67 of 2019

Resolution of JMT Auto Ltd

- The National Company Law Tribunal, New Delhi, Bench-II (**NCLT**), vide order dated August 21, 2023, has approved the Resolution Plan submitted by Ramakrishna Forgings Ltd, the Successful Resolution Applicant (**SRA**) in the Corporate Insolvency Resolution Process (**CIRP**) of JMT Auto Ltd, the Corporate Debtor (**Corporate Debtor**).
- Vide order dated February 23, 2022, the NCLT admitted the Company Petition (IB) No. 1088/ND/2018 filed by Axis Bank Ltd under Section 7 of the Insolvency and Bankruptcy Code, 2016, and ordered for initiation of the CIRP of the Corporate Debtor. Mr. Pradeep Kumar Sethi was appointed as the Interim Resolution Professional to manage the affairs of the Corporate Debtor and was subsequently confirmed as the Resolution Professional (**RP**) during the first meeting of Committee of Creditors (**CoC**) held on March 22, 2022.
- After the issuance of Form G on May 11, 2022, the RP received 7 Expression of Interest (**EOIs**) from Prospective Resolution Applicants (**PRAs**), out of which only 2 PRAs namely Ramkrishna Forgings Ltd and RKG Fund I submitted the Resolution Plans. Both the 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 SRA, Ramkrishna Forgings Ltd was approved with 84.61% voting share by the CoC in its 12h meeting dated November 11, 2022. Pursuant thereto, the SRA has submitted a Performance Bank Guarantee of INR 12.50 crore.
- As per the Form H, the Fair Market Value of the Corporate Debtor is INR 144.19 crore and the Liquidation Value of the Corporate Debtor is INR 105.03 crore. The total amount provided under the CoC-approved Resolution Plan is INR 125 crore which is over 50% of the total amount claimed by various stakeholders and is 119% of the Liquidation Value of the Corporate Debtor.
- The Plan provides for payment of INR 125 crore as against the admitted debt of INR 220.77 crore to creditors of the Corporate Debtors.
- The NCLT after taking note of the provisions of the Resolution Plan and satisfying itself of compliance of Section 30(2) of the Code, the NCLT held that the Resolution Plan meets the requirements of Sections 30(2) and 31(1) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and approved the Resolution Plan submitted by SRA.

Resolution of Amrit India Ltd (PPIRP)

- The NCLT, New Delhi, Principal Bench (**NCLT**), vide an order dated May 03, 2023 has approved the Resolution Plan submitted by Aquarius Fincap and Credits Pvt Ltd, the Successful Resolution Applicant (**SRA**), in the Pre-Packaged Insolvency Resolution Process (**PPIRP**) of Amrit India Ltd, the Corporate Debtor (**Corporate Debtor**).
- Vide order dated November 28, 2022, the NCLT admitted the Company Petition (IBPP) No. 3 of 2022 filed by the Corporate Debtor under Section 54C of the Insolvency and Bankruptcy Code, 2016 (**Code**) and ordered for initiation of the PPIRP of the Corporate Debtor, and appointed Mr. Mukesh Kumar Jain as the Resolution Professional.
- Pursuant thereto, the Resolution Professional constituted the Committee of Creditors, comprising of sole financial creditor i.e., Mr. Awadh Saran Singh having 100% voting share.
- In the first CoC meeting held on December 12, 2022, the CoC deliberated upon the Base Resolution Plan submitted by the Corporate Debtor, however, as the same proposed a 90% haircut in the debt owed to the financial creditor and a 100% impairment to the contingent creditors, CoC requested the Corporate Debtor to improve the Base Resolution Plan and also to invite Resolution Plans from the public, as per Section 54K read with Regulations 42 to 47 of the PPIRP Regulations, 2021.
- In the third CoC meeting held on December 16, 2022, the CoC approved the contents of the invitation for Prospective Resolution Applicants and of the evaluation matrix and December 31, 2022 was determined as the last date for submission of Resolution Plans. Before the said date, the Resolution professional received only one Resolution Plan, from the SRA.
- After due discussions and deliberations, in the fifth CoC meeting held on February 21, 2023, the Resolution Plan submitted by the SRA was approved by the CoC by a majority of 100%.
- A perusal of the order of approval of Resolution Plan shows that the Resolution Plan provides for a total payment of INR 7.20 lakh to the stakeholders, including the sole secured financial creditor as well as other creditors against an admitted debt of INR 38.32 lakh. The Plan proposes for the amount of INR 5 lakh to be paid to financial creditors in two tranches – 50% on the approval of the Resolution Plan by the CoC (to be considered as the Performance Bank Guarantee) and the rest of the 50% upon the approval of the Resolution Plan by the NCLT, Principal Bench.

- The Successful Resolution Applicant has the net worth of INR 544.61 crore on March 31, 2022. Further, the new promoters have undertaken to infuse funds from its internal accruals. As such, the financial resources of the Successful Resolution Applicant are sufficient to provide for the funds required for further business.
- The Resolution Plan provides that subsequent to the implementation of the Plan, the equity shareholders of the Corporate Debtors from the public to the extent of 6,52,220 shares will be assigned shares of the transferee company in the ratio of one share for every 200. Preference shares of the Corporate Debtor shall be extinguished.
- Based on the abovementioned observations, the NCLT approved the Resolution Plan and concluded the PIRP of Amrit India Ltd.

Resolution of GBJ Hotels Pvt Ltd

- The NCLT, Chennai Bench, Court-I, vide an order dated August 25, 2023 approved the Resolution Plan submitted by K.P. Advisory Services LLP, the Successful Resolution Applicant (**SRA**), in the CIRP of GBJ Hotel Pvt Ltd
- The Corporate Debtor is engaged in the business of providing short-stays accommodation through hotels, camp sites and sleeping cars located at various locations. Vide order dated April 04, 2022, the NCLT, Chennai Bench, Court-I (**NCLT**) admitted the Company Petition (IB) No. 279/CHE/2021 filed by Indian Overseas Bank under Section 7 of the Code and ordered for initiation of the CIRP of the Corporate Debtor. Mr. Mahalingam Suresh Kumar was appointed as the Interim Resolution Professional, who was later confirmed as the Resolution Professional of the Corporate Debtor.
- 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, on June 03, 2022, pursuant to which a Resolution Plan submitted by Popply Knitwear Pvt Ltd was placed before the committee of creditors (**CoC**). After discussions and negotiations, the CoC did not proceed ahead with the Resolution Plan and resolved to publish revised form G. The Resolution Professional issued a fresh Form-G on September 16, 2022 and received Expression of Interest (**EOIs**) from four PRAs which culminated into Resolution Plans.
- The members of CoC resolved to conduct the Swiss Challenge Method to increase the bid amount and maximization of the value of assets of the Corporate Debtor. Pursuant to the Swiss Challenge, KP Advisory Services LLP emerged as the successful bidder. The Resolution Plan submitted by the SRA was approved unanimously by 100% voting share. The SRA, in terms of the RFRP has submitted a sum of INR 18.48 crore towards the performance bank guarantee.
- The Resolution Plan submitted by the SRA proposes to pay an amount of INR 184.86 Crores against the admitted liability of INR 196.16 crore to the creditors of the Corporate Debtor within a period of 45 days from the Approval Date.
- Relying on the position laid down by the Supreme Court in *K Sashidhar v. Indian Overseas Bank*⁹ and *Committee of Creditors of Essar Steel India Ltd vs. Satish Kumar Gupta & Ors*¹⁰, the NCLT observed that the power of judicial review conferred on the Adjudicating Authority under Sections 30(2) and 31 of the IBC is limited and it does not extend to modifying the Resolution Plan which the CoC, in their commercial wisdom, have approved.
- The NCLT after satisfying itself that the Resolution Plan is compliant of Section 30(2) of the Code and does not contravene any provision of law has approved the Resolution Plan submitted by the SRA for the Corporate Debtor.

⁹ Civil Appeal No. 10673 of 2018

¹⁰ Civil Appeal No. 8766-67 of 2019



COMPANIES ADMITTED TO INSOLVENCY IN SEPTEMBER 2023

Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Aaryany Creations Pvt Ltd	New Delhi	Fabrics
2	ACE Footmark Ltd	New Delhi	Footwear
3	AMRL Hitech City Ltd	Chennai	Real estate
4	Ashoka Machine Tools International Pvt Ltd	New Delhi	Customized machining and heavy equipment fabrication
5	B Nanji Enterprises Ltd	Ahmedabad	Real estate
6	Bombay Infrastructure India Ltd	Mumbai	Steel and iron products
7	Brijbihari Metaliks Pvt Ltd	Allahabad	Manufacturing of basic precious and non-ferrous metals
8	BSFC Distributors Pvt Ltd	Mumbai	Trading
9	C&A Farm Fresh Pvt Ltd	Chandigarh	Supply of fruits
10	Coast Town Planners Pvt Ltd	New Delhi	Real estate
11	Danla Metaliks Pvt Ltd	Kolkata	Iron and steel
12	Dreamz Infra India Ltd	Bengaluru	Real estate
13	Ecoman Enviro Solutions Pvt Ltd	Mumbai	Solid Waste Management
14	EDAC Engineering Ltd	Chennai	Engineering Procurement Construction (EPC)
15	Fine Dine Ventures Pvt Ltd	Mumbai	Catering
16	Ganpati Hightech Communication Pvt Ltd	Kolkata	Communication
17	GR Polyfilm Pvt Ltd	Kolkata	Manufacturing of plastic commodities
18	Imperia Structures Ltd	New Delhi	Real estate
19	IRAA Clothing Pvt Ltd	Mumbai	Clothing
20	Jain Timber Co Pvt Ltd	New Delhi	Pinewood
21	Jagdamba Industries Ltd		Cement
22	Jammu and Kashmir Cements Ltd	Kolkata	Cement
23	Jelenta Polytraders Pvt Ltd	Chandigarh	Wholesale
24	Kalundre Metaliks Pvt Ltd	Kolkata	Importing shipments of HR coils
25	KRP Infrastructure & Builders Pvt Ltd	New Delhi	Real estate
26	Lokhandwala Kataria Construction Pvt Ltd	Allahabad	Real estate
27	Manidhari Stainless Wire Pvt Ltd	Mumbai	Steel
28	MAV Steel Pvt Ltd	Hyderabad	Iron and steel
29	MGI Infra Pvt Ltd	New Delhi	Real estate
30	MU Buildcon Pvt Ltd	New Delhi	Real estate
31	Oriel Windows Pvt Ltd	New Delhi	Energy-efficient uPVC window and door
32	Reacon Engineers (India) Pvt Ltd	Mumbai	Construction related activities
33	Reliance Big Pvt Ltd	Kolkata	Entertainment
34	Richi Richi Agro Food Pvt Ltd	Mumbai	Food products and food processing
35	Rite Developers Pvt Ltd	Chandigarh	Real estate
36	Rite Builtec Pvt Ltd	Mumbai	Real estate
37	Sahara India Medical Institute Ltd	Mumbai	Medical
38	Schon Ultrawares Pvt Ltd	Mumbai	Biodegradable products
39	SEL Textile Ltd	New Delhi	Textiles
40	Sheel Auto Industries Pvt Ltd	Chandigarh	Auto ancillaries
41	Sheth Developers Pvt Ltd	Chandigarh	Real estate
42	Shib Dass Metals Pvt Ltd	Mumbai	Industrial law material
43	SIS Mohan Real Estate Pvt Ltd	New Delhi	Real estate

44	Smart I Security and Automation Pvt Ltd	Kolkata	Electric automation
45	Souvenir Developers (India) Pvt Ltd	Mumbai	Real estate
46	Sovika Aviation Services Pvt Ltd	Mumbai	Aviation
47	Sunita Logistics Pvt Ltd	Mumbai	Logistics business
48	Supreme Polytubes Ltd	Mumbai	Plastic
49	Teriyaki Builders Pvt Ltd	Chandigarh	Real estate
50	Three Leaf Foods Pvt Ltd	New Delhi	Food products
51	Topaki Media Pvt Ltd	Mumbai	Real estate
52	Transtresure Services India Ltd	Mumbai	IT services
53	Trichy-Thanjavur Expressway Ltd	Mumbai	Infrastructure
54	Varaha Infra Ltd	Hyderabad	Infrastructure projects
55	Versatile Pharma Pvt Ltd	Jaipur	Pharmacy
56	Whiz Enterprise Pvt Ltd	Hyderabad	Chemicals
57	Yash Jewellery Pvt Ltd	Mumbai	Jewelry

Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Aawrun Furnishings Man-Tra Pvt Ltd	Kolkata	Home furnishing
2	Anand Distilleries Pvt Ltd	Mumbai	Food and beverage
3	Anu Engitech Pvt Ltd	Chennai	Manufacturing of structural metal products, tanks, reservoirs and steam generators
4	Apex Business Services Pvt Ltd	Mumbai	Services
5	Bahula Infotech Pvt Ltd	Kolkata	Information technology
6	Blue Cross Road Solutions Ltd	Mumbai	Trading business
7	Camel Shelters Pvt Ltd	Chennai	Construction
8	Cosmopolitan Technofab Textiles Pvt Ltd	New Delhi	Apparels
9	Coursecube Pvt Ltd	Bengaluru	Training platform
10	Daffodl Shelters Pvt Ltd	Chennai	Real estate
11	Epitome Petrochemical Pvt Ltd	Kolkata	Petroleum
12	Fauna Realtors Pvt Ltd	Chennai	Real estate
13	Gemini Arts Pvt Ltd	Chennai	Entertainment
14	Gulls Realtors Pvt Ltd	Chennai	Real estate
15	Iceberg Developers Pvt Ltd	New Delhi	Real estate
16	KUT Energy Pvt Ltd	Chandigarh	Hydro power projects
17	Mahakal Agro Storage & Processing Unit Pvt Ltd	Hyderabad	Warehousing
18	Nandlal Kamal Kishore Vyapaar Pvt Ltd	Kolkata	Manufacturing and supply
19	Pandhe Infracons Pvt Ltd	Mumbai	Construction
20	PL Vehicles Pvt Ltd	Guwahati	Vehicles
21	Prithvi Energy Ltd	Kolkata	Electricity
22	Raghav Sarees Pvt Ltd	Kolkata	Clothing
23	Ramdev PVC Product Pvt Ltd	Ahmedabad	PVC products
24	Shivani Trendz Pvt Ltd	Mumbai	Textile
25	SPG Global Distribution Pvt Ltd	Chandigarh	Distributors
26	Sri Ganga Steel Enterprises Pvt Ltd	Hyderabad	Steel
27	STL Exports Ltd	Indore	Iron and steel
28	Sunshine HI-Tech Infracon Ltd	Ahmedabad	Real estate
29	Supertharm Engineers Pvt Ltd	Mumbai	Industrial boilers
30	Ten K Overseas Ltd	Chandigarh	Leather clothing
31	Ultramine Pipetech Pvt Ltd	Kolkata	Plastic products
32	Varsha Corporation Ltd	Mumbai	Polymers
33	Vinesh Traders Pvt Ltd	New Delhi	Process control automation

CONTRIBUTIONS BY:

Abhirup Dasgupta | **Partner**

Pratik Ghose | **Partner**

Ishaan Duggal | **Principal Associate**

Avishek Roy Chowdhury | **Principal Associate**

Mukta Halbe | **Associate**

HSA AT A GLANCE

FULL-SERVICE CAPABILITIES



BANKING & FINANCE



COMPETITION & ANTITRUST



CORPORATE & COMMERCIAL



DEFENCE & AEROSPACE



DISPUTE RESOLUTION



ENVIRONMENT, HEALTH & SAFETY



INVESTIGATIONS



LABOR & EMPLOYMENT



PROJECTS, ENERGY & INFRASTRUCTURE



PROJECT FINANCE



REAL ESTATE



REGULATORY & POLICY



RESTRUCTURING & INSOLVENCY



TAXATION



TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

GLOBAL RECOGNITION



STAY CONNECTED



www.hsalegal.com



mail@hsalegal.com



HSA Advocates

PAN INDIA PRESENCE

New Delhi

Email: newdelhi@hsalegal.com

Mumbai

Email: mumbai@hsalegal.com

Bengaluru

Email: bengaluru@hsalegal.com

Kolkata

Email: kolkata@hsalegal.com