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Bulletin on Landmark Judgments under IBC, 2016

TATA STEEL BSL LTD.
Vs.
VENUS RECRUITER PRIVATE LTD. & ORS.

Brief Facts

In the present case, in response to a Section 7 application made by the State Bank of India (SBI) under the Insolvency and Bankruptcy Code, 2016, the National Company Law Tribunal, New Delhi issued an order admitting M/s Bhushan Steel Limited (Corporate Debtor) into the corporate insolvency resolution process. On March 20, 2018, the Committee of Creditors (CoC) of the Corporate Debtor accepted the proposed resolution plan from Tata Steel Limited (TSL), making it the winning resolution applicant. In accordance with Section 31 of the Code, the resolution professional (RP) subsequently submitted an approved application with the NCLT on March 28, 2018, asking for TSL approval of the proposed resolution plan.

The RP found multiple suspicious transactions made by the corporate debtor with associated parties while the approval application was pending, including a preferential transaction made with Venus

Recruiters Private Limited. As a result, prior to the resolution plan's final approval, the RP submitted an application to the NCLT (Avoidance Application) under Sections 25(2)(j), 43 to 51, and 66 of the Code, in which a number of transactions were listed as "suspect transactions" involving related parties.

In the interim, on May 15, 2018, the NCLT accepted the settlement plan. On August 10, 2018, the National Company Law Appellate Tribunal affirmed this decision. On May 18, 2018, the resolution plan was finally put into effect, and the Corporate Debtor was given over to Tata Steel BSL Limited, the new management. In the meantime, the NCLT went ahead and sent notice to the Respondent firm in accordance with the Avoidance Application.

Decision

The court observed that NCLT has the authority to rule on all matters "arising out of" and "in connection to" insolvency resolution. The Division Bench construed the phrases 'arising out of' and 'in connection to' broadly, including avoidance applications even if a settlement plan had previously been accepted. The Division Bench determined that the single judge erred in admitting the Writ Petition since NCLAT would be the proper body to hear an appeal against the Notice Order. Despite the fact that the Writ Plea was declared not maintainable, the Division Bench proceeded to issue its conclusions on the legal grounds addressed in the petition.

The division court remarked that the deadlines specified in Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for filing an avoidance application by the RP are just indicative and not binding. The bench also noted the practical challenges that an RP may experience in gathering facts and reaching an opinion in order to file avoidance petitions within the timeframes required. The Code has no penalty clause against the RP for failing to submit the avoidance application within the statutory dates, and the NCLT has no time restriction for adjudicating these cases. The RP is required by the Code to file the avoidance application prior to the end of the CIRP.

Also, because avoidance procedures entail investigation and discovery of questionable transactions, they are likely to persist beyond the conclusion of CIRP. This is compatible with the requirements of Sections 25 and 26 of the Code, Regulation 38(2)(d) of the CIRP Regulations, and the remarks made in the 'Insolvency Law Committee' (ILC) report dated 20 February 2020 and the ILC report dated May 2022. The Division Bench reiterated that the avoidance petitions and the CIRP are separate and independent actions and that the RP's office does not become *functus officio* upon the conclusion of the CIRP and can continue to pursue the avoidance applications. The NCLT will decide the mode and manner in which the RP will pursue the matter.

The bench took note of Regulation 38(2)(d) of the CIRP Regulations, which came into force on May 14, 2022. These regulations require resolution plans presented after May 14, 2022, to specify how avoidance applications will be pursued following plan approval, as well as how the monies recovered from such avoided transactions would be allocated. The bench noted that the monies earned from prevented transactions were not accounted for by TSL when it submitted its resolution plan due to the RP's late filing of the application.

The bench ruled that TSL cannot be the recipient of the funds received, and that the benefits must be distributed to the creditors. It was decided that in circumstances where the profit obtained via avoidance transactions could not be accounted for in resolution plans, the benefit would accrue to the creditors. Therefore, the appeal was disposed-off along with the pending applications.

Link of the Order

https://ibbi.gov.in//uploads/order/060e96103896867558b1907b884fb137.pdf