



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



IBC AU-COURANT

Latest updates On Insolvency & Bankruptcy

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"If it makes you nervous, you're doing it right"

➤ **Avoidance Applications Survive CIRP, Can Be Heard After Approval Of Resolution Plan: Delhi High Court**

The Delhi High Court Bench comprising of the Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad, while adjudicating an appeal filed in Tata Steel BSL Limited v Venus Recruiter Pvt. Ltd. & Ors., has held that that avoidance applications filed under IBC survive even after approval of the resolution plan, in cases where Resolution Plans are unable to account for such applications. These applications can be heard even after CIRP stands concluded.

Background Facts

On an application made by the State Bank of India, M/s Bhushan Steel Limited. ("Corporate Debtor") was admitted into Corporate Insolvency Resolution Process ("CIRP") on 26.07.2017. Mr. Vijay Kumar Iyer was appointed as the Interim Resolution Professional (IRP) and thereafter confirmed as the Resolution Professional.

On 20.03.2018, the Committee of Creditors (CoC) approved the resolution plan submitted by Tata Steel Ltd. ("Successful Resolution Applicant/SRA"). Subsequently, the resolution plan was approved by the Adjudicating Authority (NCLT) on 15.05.2018 and was fully implemented.

In the meanwhile, on 09.04.2018 the Resolution Professional had filed avoidance applications under Section 25(2)(j), Sections 43 to 51 and Section 66 of the IBC against Venus Recruiter Pvt. Ltd. and others (Respondents). The Adjudicating Authority issued notice in the said applications to the Respondents, while observing that applications were made prior to the approval of the Resolution Plan and hence could be entertained.

The Respondents filed a writ petition before Delhi High Court seeking issuance of a writ declaring the proceedings of avoidance application as void, since CIRP was concluded and the SRA had assumed control of Corporate Debtor.

The Single Judge vide an order dated 26.11.2022 held that an application under Section 43 of IBC for avoidance of preferential transactions cannot survive beyond the conclusion of CIRP. The Corporate Debtor filed a Letter Patent appeal before the High Court against the order dated 26.11.2022.

High Court Verdict The Bench observed that phrase “arising out of” or “in relation to” under Section 60(5)(c) of the IBC is of a wide import. Such applications must be appropriately adjudicated by either NCLT or NCLAT, notwithstanding that the CIRP has concluded and the SRA has stepped into the shoes of the promoter of the Corporate Debtor. Further, CIRP and avoidance applications are separate set of proceedings.

While CIRP is time bound, the avoidance applications require a proper discovery of suspect transactions that are to be avoided by Adjudicating Authority. IBC reinforces this difference and therefore adjudication of an avoidance application is independent of the resolution of the Corporate Debtor and can survive CIRP. “...it cannot be accepted that avoidance applications will be rendered infructuous in situations wherein the resolution plan could not have accounted for avoidance applications due to exigencies that delayed initiation of action in respect of avoidable transactions beyond the submission of a resolution plan before the adjudicating authority.

This is because such an interpretation will render the provisions pertaining to suspect transactions otiose and let the beneficiaries of such transactions walk away, scot-free.....Therefore, in cases such as the present one, wherein such transactions could not be accounted, the Adjudicating Authority will continue to hear the application. Such benefit cannot be given in cases where the RP had already applied for prosecution of avoidance applications and the applicant ought to have been cognizant of pending avoidance applications but did not account for the same in its resolution plan.”

The Bench further held that the Resolution Professional will not be functus officio with respect to adjudication of avoidance applications and the manner of the Resolution Professional’s remuneration is to be decided by the Adjudicating Authority. The Bench set aside the order dated 26.11.2022.

The NCLT has been directed to proceed with the hearing of avoidance application. It has been directed that in accordance with Sections 44 to 51 of the IBC, 2016, the amount which is recovered can be distributed amongst the secure creditors in accordance with law as determined by the NCLT.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/avoidance-applications-survive-cirp-can-be-heard-after-approval-of-resolution-plan-delhi-high-court-219131>

➤ **IBC Cases Weekly Round-Up: 9 January To 15 January 2023**

NCLAT

Case Title: Hero Fincorp Limited v M/s Hema Automotive Private Limited

Case No.: Company Appeal (AT) (Insolvency) No.1540 of 2022

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Ms. Shreesha Merla (Technical Member), held that the Adjudicating Authority’s obligation to direct for liquidation shall arise only when the CoC’s decision to liquidate is in accordance with IBC. The CoC resolved to liquidate the Corporate Debtor after preparation of the Information Memorandum and before the period for inviting Expression of Interest could expire. The NCLAT Bench upheld the Adjudicating Authority’s decision to reject the liquidation application. (NARCL), and the Arena InvestorsVarde Partners team, people aware of the development told ET.

Case Title: Srigopal Choudary v SREI Equipment Finance Ltd.
Case No.: Company Appeal (AT) (Ins) No. 1443 of 2022

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Rakesh Kumar (Judicial Member) and Ms. Shreesha Merla (Technical Member), has upheld the Adjudicating Authority’s decision to remove the Resolution Professional of Shree Ram Urban Infrastructure Ltd. The Bench has held that an authority empowered to appoint also has the right to remove/dismiss. Further, if the Resolution Professional is not convening the meeting of CoC for his replacement, then Adjudicating Authority can invoke its inherent jurisdiction and replace the Resolution Professional

Case Title: Alphabet Inc. & Ors. v Competition Commission of India & Ors.
Case No.: Competition App. (AT) No. 4 of 2023

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Rakesh Kumar (Judicial Member) and Dr. Alok Srivastava (Technical Member), has admitted Google’s appeal against CCI order dated 25.10.2022 subject to deposit of 10% of penalty amount of Rs. 936.44 Crores. The Bench has declined to grant any interim relief. The matter is next listed on 17.04.2023.

On 25.10.2022, the CCI Bench by invoking its powers under Section 27 of the Competition Act, had imposed monetary penalty of Rs. 936.44 Crore on Google for abusing its dominant position with respect to its Play Store policies, apart from issuing a cease-and-desist order. The Commission had also directed Google to modify its conduct within a defined timeline. In January 2023, Google filed an appeal before the NCLAT, challenging the Order passed by CCI imposing a penalty of Rs. 936.44 Crore on Google.

Case Title: Maharashtra Industrial Development Corporation v Bhadrashree Steel & Power Ltd. & Ors.
Case No.: Company Appeal (AT) (Insolvency) No. 1497 of 2022

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member), has held that water connection cannot be automatically restored to a Successful Resolution Applicant. A proper application has to be made seeking restoration of water connection. “We only observe that there is no concept of automatic restoration of any water connection and a proper application is required to be made following the procedure and

only benefit Successful Resolution Applicant can claim is extinguishment of the dues which are not part of the Resolution Plan.”

NCLT

Case Title: Beacon Trusteeship Ltd. v Radius Estates and Developers Pvt. Ltd.

Case No.: CP (IB) No: 1390 of 2020

The National Company Law Tribunal (“NCLT”), Mumbai Bench, comprising of Shri Kuldip Kumar Kareer (Judicial Member) and Smt. Anuradha Sanjay Bhatia (Technical Member), has approved the Resolution Plan submitted by M/s. Adani Goodhomes Pvt. Ltd. for Radius Estates and Developers Pvt. Ltd. Radius Estates and Developers Pvt. Ltd. (“Corporate Debtor”) entered into a joint venture as co-developer with the MIG (Bandra) Realtors and Builders Pvt. Ltd., for redevelopment of a land situated at Bandra (East) Mumbai (“Project”). The Project included construction of residential flats/units for: (i) rehabilitation of the members of the Middle-Income Group Co-operative Housing Society; and (ii) as part of the free-sale component.

HIGH COURT

Case Title: Narendra Singh Panwar v Pashchimanchal Vidyut Vitran Nigam Limited & Ors.

Case No.: WRIT - C No. - 26355 of 2022

The High Court of Allahabad Bench comprising of Justice Sunita Agarwal and Justice Vipin Chandra Dixit, has held that approval of a resolution plan under Section 31 of the IBC, does not ipso facto absolve the surety/guarantor of the Corporate Debtor of his or her liability, which arises out of an independent contract of guarantee. To what extent, the liability of a guarantor can be pressed into service would depend on the terms of the guarantee/contract itself.

Source: Live Law

Read Full news at: <https://www.livelaw.in/round-ups/weekly/ibc-cases-weekly-round-up-9-january-to-15-january-2023-219113>

