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"Don't bunt. Aim out of the ballpark. Aim for the company of immortals"

➤ **NCLT Hyderabad Recalls Order Initiating CIRP In View Of Misrepresentation By Financial Creditor**

The National Company Law Tribunal ("NCLT"), Hyderabad Bench, comprising of Dr. Venkata Ramakrishna Badarinath Nandula, (Judicial Member) and Mr. Satya Ranjan Prasad (Technical Member), while adjudicating an application filed in Canara Bank v Feno Plast Limited, has recalled its Order whereby CIRP was initiated against the Corporate Debtor, as the said Order was obtained by the Financial Creditor over misrepresentation before the Adjudicating Authority.

Background Facts The Canara Bank ("Financial Creditor") had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Feno Plast Limited ("Corporate Debtor"), over a default of Rs. 55,61,32,955.75/- inclusive of interest. The Adjudicating Authority vide its Order dated 19.10.2022 had admitted the petition and initiated CIRP against the Corporate Debtor,

The Suspended Director of the Corporate Debtor filed an application before the Adjudicating Authority, seeking recall of the Order dated 19.10.2022 whereby CIRP was initiated against the Corporate Debtor.

Contentions Of The Applicant The Suspended Director ("Applicant") argued that certain material facts pertaining to the One Time Settlement (OTS) dated 12.07.2022 entered between the Parties was not placed on record. The Financial Creditor had sanctioned OTS on 12.07.2022 in favour of the Corporate Debtor. The OTS was cancelled on 03.08.2022 and thereafter revived on 24.08.2022. The Financial Creditor did not disclose to the Adjudicating Authority that the OTS had been revived on 24.08.2022. Therefore, the Adjudicating Authority had passed the Order initiating CIRP on 19.10.2022, under the impression that the OTS was cancelled and therefore the Corporate Debtor had defaulted in payment of debt.

The Financial Creditor argued that the Adjudicating Authority does not have any jurisdiction to recall the order initiating CIRP.

Issue

Whether the Adjudicating Authority has jurisdiction to recall its order directing initiation of CIRP against the Corporate Debtor?

Decision Of NCLT

The Bench observed that the OTS sanctioned on 12.07.2022 was cancelled on 03.08.2022. Thereafter, vide a letter dated 24.08.2022 the OTS was revived. The Adjudicating Authority was not informed by either of the Parties regarding revival of OTS. The Adjudicating Authority under the impression that the OTS had been cancelled, initiated CIRP against the Corporate Debtor on 19.10.2022, upon the premise that there was a default in repayment of debt. It was observed that suppression of material facts tremendously influenced the Adjudicating Authority's finding regarding existence of default. "There can be no doubt that the plea of the Corporate Debtor that the debt was not due and payable by the date of admission of the Petition under Section 7 of IB Code, is a good ground against admission and therefore, if the same is established the petition under Section 7 of IB Code has to be rejected."

It was held that the Order dated 19.10.2022 was an outcome of misrepresentation of facts by the Financial Creditor before the Adjudicating Authority. Reliance was placed on the Supreme Court judgment in *United India Insurance Co. Ltd. v Rajendra Singh*, wherein it was held that, "No Court or Tribunal can be regarded as powerless, to recall its own order, if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim". The Bench held that the Adjudicating Authority has the jurisdiction to recall its order dated 19.10.2022.

The Order dated 19.10.2022 was recalled and the matter was re-opened for considering the Communication taken place between Parties post 24.08.2022 (after revival of OTS) and then arriving at a fresh finding on whether or not the Corporate Debtor has committed default in payment of the debt, which is admittedly not in dispute.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclt-hyderabad-recalls-order-initiating-cirp-in-view-of-misrepresentation-by-financial-creditor-214995?infinitemscroll=1>

➤ Insolvency pleas against GTL Infra, GTL Ltd dismissed

In two separate orders, the Mumbai bankruptcy court dismissed Canara Bank's petition to admit GTL Infrastructure and GTL Ltd for corporate insolvency.

The two-member bench relied on the Supreme Court's order of Vidarbha Industries Power for GTL Infra and the failure of lenders to adhere to the central bank's guidelines for GTL, according to the copies of the order reviewed by ET.

In the case of GTL Infra, the bench observed that the corporate debtor claims from various telcos would be sufficient to pay the debt of the lender.

These include a ₹13,394 crore claim against Aircel entities, a separate appeal for recovery of ₹900 crore is pending, and it must recover dues from Tata Teleservices, ATC and BSNL aggregating to ₹421 crore, pending arbitration proceedings.

"The ratio of the Vidarbha Industries is squarely applicable to the present case as the business of the corporate debtor is sustainable and it is a viable going concern under its current management; and the overall financial health of the corporate debtor is not bad enough to be admitted under CIRP," per the order passed on November 18.

In GTL Ltd's case, the court observed that 92% of lenders signed inter creditors agreement in line with the June 7 circular of the Reserve Bank of India. The corporate debtor argued that Canara Bank, with 4.4%, breached the RBI rule by not signing it.

GTL argued that Canara Bank may be entitled to reject an OTS offer because its "grossly arbitrary conduct" which is "diverging from the vast majority of lenders' decision" and "taking steps only for its individual recovery, is a malicious abuse of process."

Appearing for Canara Bank, advocate Rohit Gupta argued, "None of the member banks has objected to the petition filed by Canara Bank, which shows that they are in favour of Canara Bank's actions, alternatively, they would have filed an objection."

He said the proceeding is not for recovery but for the revival of the company. GTL Infrastructure has ₹6,142 crore, while GTL has ₹4,383 crore total debt as on March 31, 2022, according to the company's annual report.

The two-member bench comprising Shyam Babu Gautam and PN Deshmukh observed that "the initiation of insolvency proceedings, contrary to the decision of the majority of the secured creditors, would be counter-productive, especially if most of the assets are secured, as such assets would neither be available for resolution nor liquidation."

In the case of Vidarbha Industries, the apex court ordered that the mere existence of debt and default cannot be the only criteria to admit a company for corporate insolvency.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/news/company/corporate-trends/insolvency-pleas-against-gtl-infra-gtl-ltd-dismissed/articleshow/95749378.cms>

