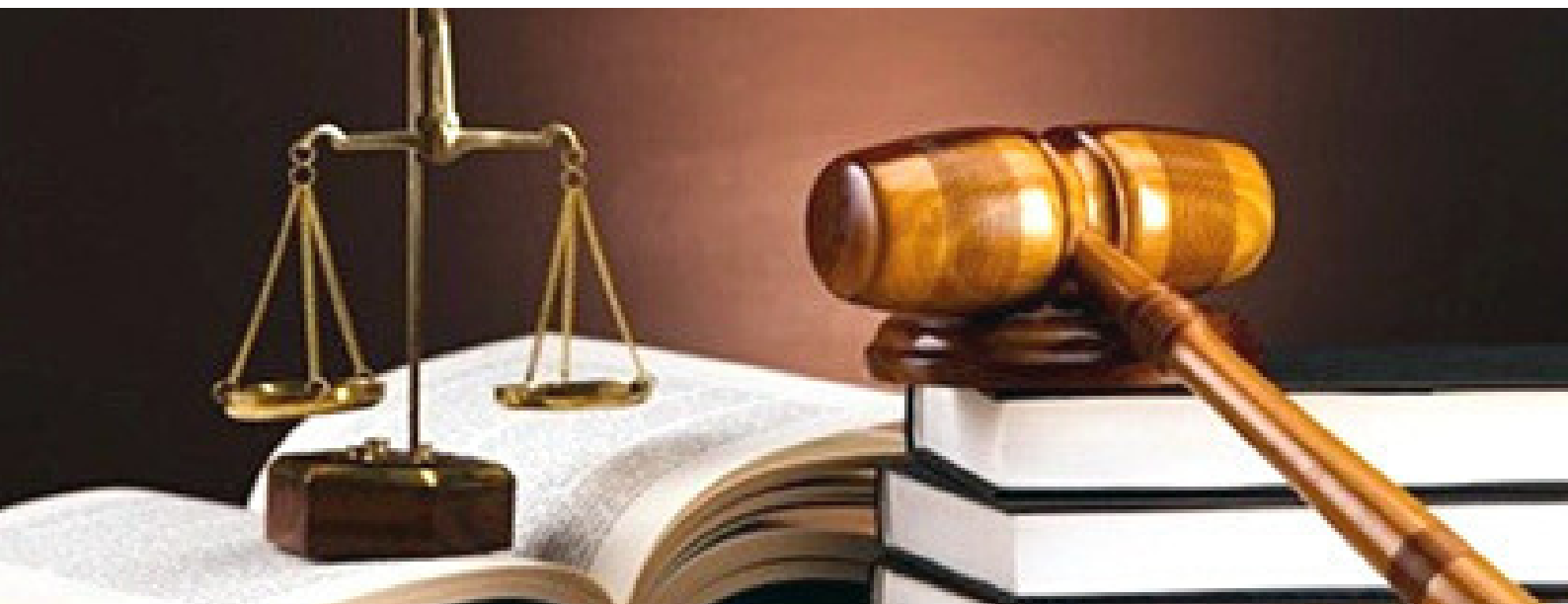


IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



MAHARASHTRA SEAMLESS LIMITED VS. PADMANABHAN VENKATESH & ORS. CIVIL APPEAL NOS. 4967-4968 OF 2019

Brief Facts

- United Seamless Tubulaar Private Limited (“Corporate Debtor”) went into corporate insolvency resolution process in July 2017 under Section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”).
- Two registered valuers were appointed by the Resolution Professional (“RP”) for the purpose of valuation of the assets of the Corporate Debtor. As per the result of two valuations, the liquidation value of the Corporate Debtor were valued at INR 681 Crores and INR 513 Crores respectively.
- On account of substantial difference in the aforesaid valuation, a third valuer was appointed which provided valuation of INR 352 Crores. Accordingly, the average of the two closest estimates of valuation of liquidation value arrived to be INR 432.92 Crores. Maharashtra Seamless Limited (“MSL”) comes out to be a successful resolution applicant for Corporate Debtor.
- The application by RP before the NCLT Bench of Hyderabad for the approval of the resolution plan of MSL was disposed- off and further directing RP to re-determine the liquidation value of the Corporate Debtor by taking into consideration the result of first and second valuation and consequently the valuation was revised from INR 432.92 Crores to INR 597.54 Crores.
- The aforesaid order of the NCLT Bench of Hyderabad was challenged before the National Company Law Appellate Tribunal (“NCLAT”), which was disposed of with directions to the NCLT Bench of Hyderabad to pass orders on the Resolution Plan under Section 31 of the IBC, 2016.
- NCLT Bench of Hyderabad approved the resolution plan proposed by MSL which involves an upfront payment of Rs. 477 Crores and additional fund infusion on the takeover of Corporate Debtor.
- The said order was further challenged before NCLAT by one of the promoters of the Corporate Debtor (“Promoter's Appeal”) and Indian Bank (“Financial Creditor's Appeal”) on the ground that the approval of MSL's Resolution Plan was giving windfall to the Resolution Applicant as they would get assets valued at INR 597.54 Crore for a much lower price.



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- NCLAT further ordered that MSL should increase the upfront payment from INR 477 Crores to INR 597.54 Crores to bring it at par with the average liquidation value of INR 597.54 Crores and MSL to deposit additional INR 120.54 Crores (difference amount) within 30 days from the date of the order failing which the order of NCLT Bench of Hyderabad dated 21 January 2019 approving MSL Resolution Plan will be treated as set aside.
- Following this, MSL preferred an appeal before Hon'ble Supreme Court for withdrawal of the resolution plan because in order to take over the corporate debtor, they availed a substantial term loan facility and deposited the sum of Rs.477 crores for resolution of the corporate debtor in a designated escrow account and on account of delay in implementation of the resolution plan, MSL is liable to bear the interest burden.

Decision

- Hon'ble Supreme Court held that there is no provision in the Code or Regulations thereunder, that has been brought to their notice, under which the bid of any Resolution Applicant has to match liquidation value in order to arrive in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- Hon'ble Supreme Court further held that the object behind prescribing such valuation process is to assist the Committee of Creditors ("CoC") to take decision on a resolution plan properly. Once a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of IBC,2016 is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 of IBC,2016.
- Hon'ble Supreme Court did not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan. It was further held that the exit route prescribed under Section 12A of IBC,2016 is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking Sections 7, 9 and 10 of the Code.
- The Supreme Court, after taking into consideration the facts of the case as well as the view taken in the Committee of Creditors of Essar Steel India Limited and Swiss Ribbons Pvt. Ltd, reiterated that the commercial wisdom of CoC in approving the resolution plan cannot be questioned and hence, set aside the order of NCLAT dated 8 April, 2019 and upheld the order of the Adjudicating Authority dated 21 January , 2019 approving the resolution plan by MSL.

Link to the Order

<https://ibbi.gov.in/uploads/order/55e89c436edcc6a95f8fe35cd9d28197.pdf>

Thanks & Regards
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