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# IBC AU-COURANT

*Insolvency Professional Agency of Institute of Cost Accountants of India*



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## **Updates on Insolvency and Bankruptcy Code**

### **Rejected Claims by Resolution Professional in Insolvency Proceedings, to be Decided by the Arbitrator: Delhi High Court**

The High Court of Delhi held that the claims rejected by Resolution Professional in the insolvency proceedings on the ground that they arose after the Insolvency Commencement Date (ICD), are to be decided by the arbitrator.

The Court held that extinguishment of claims that arose after the Insolvency Commencement Date (ICD) is a contentious issue that is to be decided by the arbitrator when the parties have an arbitration agreement.

The Court reiterated that the scope under Section 11 of the A&C Act is confined to the examination of the existence of the arbitration agreement. The Court is not to decide any contentious issue while exercising powers under Section 11 of the Act.

The Single Bench of Justice Vibhu Bakhru appointed the arbitrator to decide on the claims of a party that arose after the Insolvency Commencement Date and accordingly not included in the insolvency plan.

The parties entered into a Production Sharing Contract (PSC) with the Government of India. Subsequently, the members of the consortium entered into an agreement for carrying out activities under PSC and the petitioner was selected as the lead operator to carry out the joint operations.

The activities under the PSC were required to be conducted in conformity with an approved work program and within the approved budget. The finances for the operations were to be provided by the consortium partners including the respondent.

The petitioner raised various Cash Calls on the respondent, however, the respondent failed to comply with the cash calls, therefore, a dispute arose between the parties. The petitioner issued a Default Notice dated 15.07.2016 declaring the respondent as defaulting partner and called upon it to cure the default.

In the meantime, the respondent was admitted to CIRP under the IBC. The petitioner also filed its claim with the Interim Resolution Professional (IRP). The IRP rejected the petitioner's claims qua the defaults that happened after the ICD.

Subsequently, the petitioner raised more cash calls on the respondent. The CoC approved the final resolution plan on 09/04.2018. Subsequently, the plan was approved by the adjudicating authority.

The petitioner filed an appeal against the order of the adjudicating authority which was rejected by the appellate authority.

Accordingly, the petitioner issued a notice under Section 21 of the A&C Act on the respondent to appoint its nominee arbitrator to decide on the claims that were rejected by the IRP and those which arose subsequently.

The respondent replied to the notice and denied its liability to pay the amount claimed by the petitioner. The respondent contended that post the approval of the resolution plan the liability of the respondent stands extinguished.

The respondent objected to the maintainability of the application on the following grounds:

- In terms of Clause 1(e)(ii) of the Resolution Plan all the existing and the future claims against the respondent company, which were not included in the resolution plan, stand extinguished.
- The resolution plan is approved by the adjudicating authority; therefore, it is binding on all the parties and no such claims survive.
- The default qua the claims happened before the ICD.
- The appeal preferred by the petitioner against the order of the adjudicating authority has been dismissed.
- The Apex Court has in various judgments held that claims not included in the resolution plan cannot be pursued independently and the court has given explicit recognition to the theory of 'Clean-Slate' that postulates that the that not only all claims but also all causes of action against the company admitted to CIRP would stand extinguished on approval of the Resolution Plan.

The petitioner countered the objections raised by the respondent on the following grounds:

- The issue of extinguishment of claims not made part of the resolution plan is contentious issue, therefore, it is outside the scope of Section 11 of the A&C Act which is confined to the examination of the existence of the arbitration Act.
- The order of the adjudicating authority expressly notes that only the claims that arose before the ICD and not made part of the resolution plan stood extinguished, however, it did not preclude the creditor to pursue the claims that became due after the ICD.

- The order of the appellate authority also does not state that the claims of the petitioner that became due after the ICD would stand extinguished, therefore, the reliance on the same is misplaced.
- The forfeiture of the participating right in the consortium did not absolve the respondent of its liability.

The Court proceeded on the premise that the scope of examination under Section 11 is confined to the examination of the existence of the arbitration agreement and the Court is bound to appoint the arbitrator when there is an arbitration agreement between the parties unless it is a case of clear deadwood. The Court relied on the decision of the NCLAT in *Andhra Bank v. F.M. Hammerle Textiles, Company Appeal (AT) (Insolvency) No. 61 of 2018* to observe that the claims arising after the ICD would not be automatically extinguished.

The Court held that extinguishment of claims that arose after the Insolvency Commencement Date (ICD) is a contentious issue that falls outside the standards of examination under Section 11 of the A&C Act, therefore, it is to be decided by the arbitrator when the parties have an arbitration agreement.

**Source: Live Law**

**Read Full news at:**

<https://www.livelaw.in/news-updates/delhi-high-court-arbitration-and-conciliation-act-insolvencyand-bankruptcy-code-insolvency-commencement-date-icd-arbitrator-cirp-199489>

## **Supertech: Lender seeks ₹75cr payment for considering onetime settlement**

Realty firm Supertech's financial creditor Union Bank of India has asked the insolvency-bound company to deposit ₹75 crore as upfront cash for considering one-time settlement (OTS) of dues.

During the proceedings of the insolvency appellate tribunal NCLAT, counsel representing Supertech informed that the realty firm had several rounds of discussions with Union Bank of India.

The realty firm had offered to make an upfront payment of ₹10 crore with 10 crore on acceptance of OTS, however, the public sector lender asked to deposit ₹75 crore as a condition to consider for settlement.

"It is submitted that the Appellant (Supertech) has offered to make upfront payment of ₹10 crore with 10 crore on acceptance of OTS and ₹55 crore for exclusive security however the Bank has asked to deposit ₹75 crore as upfront to consider the OTS," the NCLAT recorded in its order dated May 17.

Union Bank of India's counsel submitted that as per policy of the Bank, it is fully entitled to ask for upfront 15-20% of the dues.

The National Company Law Appellate Tribunal (NCLAT) has asked the public sector lender to file a copy of the said policy.

"Learned Counsel for the Bank may file the copy of the Policy along with the Judgment of the Hon'ble Supreme Court on which reliance is placed in support of his submission before the date fixed," said a two member NCLAT bench headed by Chairperson Justice Ashok Bhushan.

Meanwhile, home-buyers of Supertech also filed an intervention in the matter through their counsel Piyush Singh over refund in Twin Tower case.

"We make it clear that in this Appeal there is no issue regarding the Twin Tower of Supertech," said NCLAT.

NCLAT had directed to list the appeal on May 23 and said its interim order staying formation of Committee of Creditors (CoC) would continue till then.

However, it also clarified that the interim resolution professional is free to take other steps.

"As prayed, list this Appeal on May 23, 2022. Interim order to continue till then. We have already stayed the Constitution of CoC however there is no stay of the other steps to be taken by the IRP," it said.

NCLAT's direction came, while hearing a petition filed by Ram Kishor Arora, a director of the suspended board of Supertech Ltd, against the order passed by the National Company Law Tribunal on March 25.

On March 25, the Delhi bench of NCLT initiated insolvency proceedings against Supertech Ltd over a petition filed by the Union Bank of India for non-payment of dues of around ₹432 crore.

NCLT had also appointed Hitesh Goyal as the Interim Resolution Professional (IRP) superseding the board of Supertech Ltd.

However, NCLAT had stayed the formation of the committee of creditors under the insolvency proceedings after the realty firm requested for time to enable it to approach the bank for negotiations.

The default pertains to the loan given by the Union Bank of India to Eco Village II project at Greater Noida (West) in Uttar Pradesh, which was being developed at a cost of ₹1,106.45 crore.

The formation of CoC is an important step for the Corporate Insolvency Resolution Process (CIRP) under IBC (Insolvency & Bankruptcy Code).

Once NCLT initiates CIRP against a debt-ridden firm, it appoints an Interim Resolution Professional (IRP) after suspending the board of the firm.

Article 18 of IBC mandates that it is the duty of the IRP to constitute the committee based on all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor.

Meanwhile, the erstwhile management of realty firm Supertech Ltd. Wednesday informed the Supreme Court that it has submitted a settlement proposal with the financial creditor Union Bank of India to resolve the dispute over payment of dues with the NCLAT.

A bench of Justices DY Chandrachud, Surya Kant, and PS Narasimha was told by senior advocate S Ganesh, appearing for erstwhile management, that they have submitted the proposal and urged the court to direct the NCLAT to consider it.

The bench said, "You have placed it. They (NCLAT) will consider it. We should not be issuing any such direction for consideration. It is not appropriate for us to direct them".

At the outset, amicus curiae advocate Gaurav Agrawal informed the court that the matter before the NCLAT was listed for hearing on May 17 but it was adjourned.

Counsel appearing for Interim Resolution Professional (IRP) which has been appointed by NCLT submitted that erstwhile management had issued cheques to several home buyers, which have now been dishonoured due to insufficient funds and they have now started instituting legal proceedings against him.

The bench said it needs to protect the IRP and directed that no such proceedings be initiated against him.

A counsel for home buyers said that the legal proceedings for cheque bounce are barred by limitation and if they do not initiate such proceedings within a stipulated time, they will lose the remedy under the Negotiable Instrument Act.

The bench, then exercising its power under Article 142 of the Constitution extended the limitation period, till further orders.

Earlier, on May 6, the embattled real estate major Supertech Ltd had informed the top court that it is in talks with the financial creditor Union Bank of India to resolve the dispute over the payment of dues.

The top court was also informed by Agrawal that the company Supertech Ltd does not have sufficient amount in its account to make the refund to home buyers of the to be razed twin towers in the Emerald Court project in Noida.

The bench had told Agrawal that a way out had to be found to pay the home buyers of the Twin Towers as per the orders of the court.

On April 4, the top court said it will protect the interest of home buyers of 40 storey twin-towers of Emerald Court project of real estate developer Supertech Ltd, which has been now declared bankrupt by NCLT, and directed them to file by April 15 their claims for refund of payments.

The realty firm had informed the top court that it will be filing an appeal against the order of the National Company Law Tribunal (NCLT) declaring it bankrupt on a plea filed by the Union Bank of India for non-payment of around ₹432 crore worth of dues.

The amicus had earlier said that there were a total of 711 home buyers of the twin towers out of which the company had settled the claim of 652 home buyers.

On February 28, the NOIDA authority informed the top court that the work for the demolition of Supertech's twin 40-storey towers in its Emerald Court project, which have been held illegal for a violation of norms, has commenced and will be razed completely.

The authority in the status report said that after the demolition of these massive structures, the entire debris will be cleared of the site by August 22.

The top court had asked all the stakeholders including NOIDA and Supertech Ltd to strictly abide by the timeline given in the status report and listed the matter for further hearing on May 17.

On August 31 last year, the top court had ordered the demolition of Supertech Ltd's twin 40-storey towers under construction within three months for violation of building norms in "collusion" with NOIDA officials, holding that illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

The NOIDA authority had received a rap on its knuckles as the top court pointed out multiple incidents of collusion of its officials with Supertech Ltd in the Emerald Court project and violations of norms by the realty major in the construction of the twin towers.

The top court had directed that the entire amount of home buyers be refunded with 12 percent interest from the time of the booking and the RWA of Emerald Court project be paid ₹2 crore for the harassment caused due to the construction of the twin towers, which would have blocked sunlight and fresh air to the existing residents of the housing project adjoining the national capital.

**Source: Mint**

**Read Full news at:**

<https://www.livemint.com/companies/news/supertech-lender-seeks-rs-75-cr-payment-for-considering-one-time-settlement-11652890765674.html>

## **Google's Russian subsidiary files for bankruptcy: document**

The Russian subsidiary of Alphabet Inc's Google has filed for insolvency, according to a message posted on Russia's official registry Fedresurs on Wednesday.

The subsidiary was "submitting a notice of the intention to declare itself insolvent (bankrupt)", the note said.

"Since March 22, 2022, it foresees its own bankruptcy and inability to fulfil its monetary obligations, demands to pay severance payments and (or) the remuneration of staff working or previously working under an employment contract, and (or) the obligation to make mandatory payments within the prescribed period," the note said.

Google did not immediately respond to a request for comment. David Sneddon, who the document named as the subsidiary's general director, could not immediately be reached.

Russia on Tuesday said it was not planning to block Alphabet's YouTube, in spite of repeated threats and fines, acknowledging that such a move would likely see Russian users suffer and should therefore be avoided.

Rostelecom chief executive Mikhail Oseevskiy on Wednesday said Google was operating as normal in the country, including all its servers, the TASS news agency reported.

It was not immediately clear if fines imposed against Google, which include a 7.2-billion-rouble (\$113 million) charge in December for what Moscow said was a repeated failure to delete content Russia deems illegal, were to blame for the declaration of insolvency.

The subsidiary's 2021 revenue was 134.3 billion roubles, Interfax news agency's Spark database of Russian companies showed.

**Source: The Economic Times**

**Read Full news at:**

<https://economictimes.indiatimes.com/tech/technology/googles-russian-subsiary-files-for-bankruptcy-document/articleshow/91641722.cms>



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