

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

NCLAT New Delhi - Judgments'

Ascot Realty Private Limited Vs. Ajay Kumar Agarwal, IRP of RDH Technologies Private Limited –

Even if Corporate Debtor issued guarantee in recovery proceeding for the financial debt of third party & in default the said guarantee/s have been invoked by the Financial Creditor, the Corporate Debtor is liable to pay the amount being amount of liability in respect of guarantee issued which falls in the definition of Section 5(8)(i) of IBC

Sudip Bhattacharya RP of Reliance Naval and Engineering Ltd.

It was held that having regard to the imposition of lockdown on account of outbreak of COVID-19 declared as pandemic from 23rd March, 2020 to 29th May, 2020 (Nationwide) and the fact that the State of Maharashtra where the Corporate Office of the Corporate Debtor is stated to be located has been worst hit with most of the areas declared Red Zone culminating in extension of lockdown till 31st August, 2020, the hardship was required to be mitigated by allowing the exclusion as prayed for and allowed this appeal by directing that the period of lockdown w.e.f. 25th March, 2020 till 31st August, 2020 shall be excluded while computing the period of

CIRP. Further held that to avoid any confusion/ambiguity, make it clear that this direction will not in any case be construed as interference with the extension of 90 days' time granted by the Adjudicating Authority, which shall begin only after expiry of the period of CIRP period of 180 days after excluding the period from 25th March, 2020 upto 31st August, 2020. With these observations the appeal is disposed of.

Arenja Enterprises Private Ltd. Vs. Edward Keventer (Successors) Private Ltd.

The expression "borrow" is wide enough to include an advance given by the homebuyers to a real estate developer for "temporary use" i.e. for use in the construction project so long as it is intended by the agreement to give "something equivalent" to money back to the homebuyers. The "something equivalent" in these matters is obviously the flat/apartment. Also of importance is the expression "commercial effect". "Commercial" would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is "raised" under a real estate agreement, which is done with profit as the main aim, such amount would be subsumed within Section 5(8)(f) as the sale agreement between developer and home buyer would have the "commercial effect" of a borrowing, in that, money is paid in advance for temporary use so that a flat/apartment is given back to the lender. Allotment of built-up area against the consent decree & settlement terms is not Financial Debt under Sec. 5(8)(f) since no sum has been raised from an allottee under the Real Estate Project.

M/s. R.G. Shaw & Sons Private Limited & Anr. Vs. M/s. Naviplast Trader Private Limited & Ors.

Proceeding under Section 138 of the Negotiable Instruments Act was initiated due to dishonor of cheque and the same cannot be a ground to reject the application under Section 7 of the Code, there being debt and default.

Mr. Devarajan Raman - Resolution Professional of Poonam Drum & Containers Pvt. Ltd. Vs. Bank of India Ltd. –

The Resolution Professional has worked for about three months. Since the expenses have been allowed in full and the consolidated amount of Rs.5 Lakh + GST has been allowed as fee of the Resolution Professional for entire period, NCLAT held that the same is not unreasonable. Fixation of fee of the Resolution Professional is not a business decision depending upon the commercial wisdom of the Committee of Creditors.

NCLT - Judgments'

Himanshu Prafulchandra Varia Vs. Sunil Kumar Agarwal Liquidator Of Varia Engineering Pvt. Ltd. & Ors. – NCLT Ahmedabad

When the liquidation process is in the verge of completion, the applicant (Suspended Management) filed the instant application with above prayers having no locus standi. It is quite unheard that how the suspended management can seek direction from this Adjudicating Authority to allow him to run the company till it is not being sold as a going concern, when the company is under liquidation. In fact, the suspended management has no locus standi to move such kind of application, when Corporate Debtor company is under the control of the liquidator. Moreover, there is no such statutory provision which allows the Corporate Debtor to run the company till it is sold as going concern. The application so filed by the applicant is not only bad in the eye of law but is blatant misuse of the process of law.

Allahabad Bank Vs. Anil Kumar IRP of KSL and Industries Limited – NCLT Ahmedabad

NCLT held that as per Section 7 of the IB Code, the Financial Creditor has the prerogative to propose the name of the IRP/RP and thereafter, they may change it by filing an application under Section 22 of the IB Code. However, to resolve this issue and to end the stalemate between the secured and unsecured Financial Creditors, this Bench in exercise of power under Rule 11 of the NCLT Rules 2016, do hereby appoint Mr. Kiran Shah as the new IRP/RP and direct him to convene the COC meeting and complete the CIRP as early as possible. Further, the period which is consumed in deciding this Application as well as the lockdown period i.e. from 25.03.2020 to 31.05.2020, is exempted.

LML Limited Vs. Officer of Commissioner of Income Tax, Mumbai -NCLT Allahabad Bench

NCLT held that: 1. the applicability of Sec 45 and 46 of The Income Tax Act will not have an overriding effect on the waterfall mechanism provided under Sec 53 of the IBC, 2016 2. as the corporate debtor is in liquidation under the Code, the Income Tax Department can no longer claim a priority in respect of clearance of tax dues as provided Under Sec 178(2) and (3) of the Income Tax Act,1961 as also held in case of Leo Edibles & Fats Ltd v. Income Tax Department. 3. as per Sec 238 of the Code, the provision of the Code shall have an overriding effect on any other enactment and Sec 53 of the Code provides the waterfall mechanism for distribution of assets in which Sec 53(b) i.e the debt owed to the secured creditors has been given priority over government dues as reflected under

Sec 53(1) and has to be dealt accordingly. 4. the tax liability arising out of the sale of assets by the liquidator shall be distributed in accordance with the provisions of Section 53 of the Insolvency and Bankruptcy Code, 2016 and the capital gain tax shall not be treated as the liquidation cost.