

Restructuring & Insolvency

Monthly Newsletter

March 2024

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STATUTORY UPDATES

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024

- The Insolvency and Bankruptcy Board of India (IBBI) vide notification dated February 15, 2024 notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024 (**CIRP Amendment Regulations**).
- By way of CIRP Amendment Regulations, IBBI has inserted Regulations 4D, 31B in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) and has caused amendment in Regulations 18, 25, 35, 36, 36A, 38, 40 of the CIRP Regulations, as detailed below.
- *Firstly*, in consonance with the provisions of Real Estate (Regulations and Development) Act, 2016 (**RERA**) and to ensure transparency, IBBI has inserted Regulation 4D in the CIRP Regulations to mandate operation of separate bank account by the Resolution Professional for each real estate project.
- *Secondly*, in order to streamline and improve the monitoring of the Committee of Creditors (**CoC**) on the CIRP, IBBI has also inserted Regulation 31B in the CIRP Regulations to state that the insolvency professional shall place the operational status of the Corporate Debtor and shall seek approval for all the costs involved in the process.
- *Thirdly*, in order to strengthen the CIRP process, IBBI has caused the following amendments in the CIRP Regulations:
 - Regulation 18(1) of the CIRP Regulations has been amended to mandate meetings of the CoC within a period of 30 days from the last CoC meeting. This period, however, can be extended subject to the condition that there shall be at least one meeting in each quarter.
 - Regulation 25(5)(b) of the CIRP Regulations has been amended to ensure time bound voting process by the members of CoC on any agenda and states that in the event any member of the CoC does not vote during the meeting of the CoC, the Resolution Professional shall seek vote from such members by electronic voting within the time frame decided by the CoC which shall be between 1 to 7 days and can be extended up to 24 more hours on the request of such member. IBBI has however, clarified that the Resolution Professional shall not extend the voting window in case the requisite majority vote has been obtained and one extension has already been granted to such member of the CoC.
 - Regulation 35(2) of the CIRP has been amended to enable the CoC members to take an informed decision and mandates sharing of valuation reports including the liquidation value and fair value of the Corporate Debtor with every member of the CoC on receipt of confidentiality undertaking

- Regulation 36(2)(ka) has been inserted in the CIRP Regulations to clarify that the CoC may decide not to disclose the fair value of the Corporate Debtor if they deem it beneficial for the resolution process.
- Regulation 38(4) and (5) have been inserted in the CIRP Regulations to empower the CoC to consider the requirement of a monitoring committee for the implementation of the resolution process and decide the constitution of such committee. The Regulations clarify that in the event the Resolution Professional of the Corporate Debtor is proposed to be a part of the monitoring committee, his monthly fee shall not exceed the fees paid to him during the CIRP.
- Regulation 40 of the CIRP Regulations has been amended to clarify that the Resolution Professional shall continue to discharge his duties under the IBC during the pendency of an extension application before the Adjudicating Authority.

Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2024

- The IBBI vide notification dated January 31, 2024 notified the IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2024 (**Voluntary Liquidation Amendment Regulations**).
- In order to streamline the process, IBBI has caused amendment in Regulations 3(1), 8(1), 37 and 39 of the IBBI (Voluntary Liquidation Process) Regulations, 2016 (**Voluntary Liquidation Regulations**) by way of Voluntary Liquidation Amendment Regulations, as detailed below.
 - Sub-regulation (iii) has been inserted in Regulation 3(1)(a) and in Regulation 3(1)(b) to mandate adequate disclosure about pending proceedings in respect of the Corporate Debtor and provisioning to meet obligations arising out of such proceedings.
 - Regulation 37 of the Voluntary Liquidation Regulations have been amended to state that in case the process continues for a period longer than 360 days (270 days extended by 90 days, as the case may be), the Liquidator shall convene meeting of the contributories within 15 days of expiry of such period and present a status report indicating progress in liquidation including the reasons for non-completion of the liquidation process during the stipulated period. This Status Report shall also be filed with the IBBI within a period of 7 days from the meeting of contributories.
 - In order to facilitate distribution of the unclaimed amount, Regulation 39 of the Voluntary Liquidation Regulations providing for the CL Account of the Corporate Debtor has been amended to lay down the process of withdrawal of any amount from the CL Account by any person including the stakeholders. Prior to dissolution of a corporate person, any person claiming to be entitled to any amount deposited in the Corporate Liquidation Account may request the Liquidator for withdrawal of such amount in Form-I. After verification of such claim, the Liquidator shall forward this request to IBBI, who in turn may release this amount to the Liquidator for onward distribution. The amendment further mandates intimation of such distribution to the Adjudicating Authority. However, after dissolution, any person claiming to be entitled to any amount deposited in the Corporate Liquidation Account may apply to the IBBI in Form-I for and order for withdrawal of such amount.

Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2024

- The IBBI vide notification dated January 31, 2024 notified the IBBI (Insolvency Professionals) (Amendment) Regulations, 2024 (**IP Amendment Regulations**).
- IBBI has inserted Regulation 22A and has caused amendment in Regulations 23B and 23C of the IBBI (Insolvency Professional) Regulations, 2016 (**IP Regulations**) by way of IP Amendment Regulations, as detailed below.
 - Regulation 22A has been inserted to mandate approval of the Adjudicating Authority for resignation of the Insolvency Professional from any assignment. It has been clarified that the Insolvency Professional shall be required to discharge his duties till the approval of such resignation by the Adjudicating Authority.
 - Regulations 23B and 23C have been amended to clarify that an Insolvency Professional who is an Insolvency Professional Entity (**IPE**) may engage any of its directors/partners for any work relating to its assignment other than work related to valuation and audit of a debtor.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024

- Guarantors to Corporate Debtors) (Amendment) Regulations, 2024 (**PG Amendment Regulations**).
- By way of this amendment, IBBI has inserted Regulation 17A in the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2024 (**PG Regulations**) to state that a repayment plan, if received, shall be placed in the meeting of creditors. Further, if a repayment plan has not been received, the same shall be intimated in the meeting of creditors.
- Further, IBBI has omitted Regulation 4(1)(c) which disqualified a director/partner of an IPE to be appointed as a resolution professional in case any other director/partner of such IPE represented any party in the resolution process.

Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024

- The IBBI vide notification dated January 31, 2024 notified the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024 (**Bankruptcy Amendment Regulations**).
- By way of this amendment, IBBI has omitted Regulation 3(1)(c) and 5(1)(c) of the IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2024 (**Bankruptcy Regulations**) which disqualified a director/partner of an IPE to be appointed as a bankruptcy trustee in case any other director/partner of such IPE represented any party in the bankruptcy process.



RECENT JUDGMENTS

Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr

Supreme Court of India | Judgment dated February 12, 2023 | Civil Appeal Nos. 7590-7591 of 2023

Background facts

- This Appeal was preferred by Greater Noida Industrial Development Authority (**GNIDA**) in the CIRP of JNC Construction (P) Ltd (**Corporate Debtor**) being aggrieved by the Order dated November 24, 2022 passed by the National Company Law Appellate Tribunal, New Delhi (**NCLAT**) in Company Appeal (AT)(INS) No. 867 of 2021 dismissing Appeal against Order dated April 05, 2021 passed by the National Company Law Tribunal, New Delhi (**NCLT**) in I.A. Nos. 1380 of 2021 and 344 of 2011 inter alia seeking recall of Resolution Plan Approval Order and questioning its treatment as Operational Creditor of the Corporate Debtor, respectively.
- Pertinently, GNIDA had leased its land for a period of 90 years to the Corporate Debtor for a residential project for a premium payable in instalments. However, the Corporate Debtor defaulted in payment of the instalments and was served with a demand cum pre-cancellation notice.
- Thereafter, CIRP was initiated in respect of the Corporate Debtor on May 30, 2019 and in pursuance thereto, GNIDA submitted its claim of approximately INR 43.40 crore as a financial creditor of the Corporate Debtor. The Resolution Professional advised GNIDA to submit its claim as an Operational Creditor of the Corporate Debtor. However, no fresh claim was submitted by GNIDA as an Operational Creditor of the Corporate Debtor and in the meantime, a Resolution Plan in respect of the Corporate Debtor was approved by the CoC.
- On being intimated regarding the approval of the Resolution Plan, GNIDA filed an application challenging the Resolution Plan and the decision of the Resolution Professional to treat GNIDA as an Operational Creditor and all the actions taken in pursuance thereof. Further, GNIDA filed another application seeking recall of the Resolution Plan Approval Order passed by the Adjudicating Authority.
- Succinctly put, these applications were filed on the following basis.
 - Power of Resolution Professional to treat GNIDA as an Operational Creditor
 - Error in Resolution Plan stating that GNIDA did not submit its claim
 - No hearing opportunity to GNIDA by the CoC
- These applications were dismissed by the Adjudicating Authority holding that the CIRP qua the Corporate Debtor is complete and GNIDA failed to take action during the pendency of the Resolution Plan Approval Application before the Adjudicating Authority.
- The order passed by the Adjudicating Authority was challenged by GNIDA before the NCLAT and the NCLAT also dismissed the Appeal preferred by GNIDA holding that (a) despite advise of the Resolution Professional, GNIDA chose to not file its claim as an Operational Creditor of the

Corporate Debtor; (b) In terms of the judgement passed by Supreme Court in *New Okhla Development Authority v. Anand Sonbhadra*¹, GNIDA is not a financial creditor of the Corporate Debtor; (c) GNIDA was not diligent enough to pursue its right after receiving information regarding approval of Resolution Plan by the CoC; and that the (d) Commercial wisdom of CoC is non-justiciable.

- GNIDA argued that it filed claim as a secured financial creditor of the Corporate Debtor and even if GNIDA was not a financial creditor, the Resolution Plan ought to have provided for its claim as a secured creditor of the Corporate Debtor. It was also argued that the CoC meetings were not notified to them thereby preventing GNIDA to participate in the CoC meetings. According to GNIDA, the Adjudicating Authority failed to consider the ownership and statutory charge of GNIDA over the assets of the Corporate Debtor and consequently failed to consider the feasibility and viability of the Resolution Plan submitted qua the Corporate Debtor.
- On the other hand, the Respondents argued that GNIDA is not a financial creditor in view of Anand Sonbhadra (Supra) and therefore had no voting right in the CoC. It was further argued that once the Resolution Plan qua the Corporate Debtor is approved, GNIDA cannot challenge the same through a Recall application.

Issues at hand?

- Whether it is mandatory to file Claim in the correct form prescribed under the IBC for consideration by the Resolution Professional?
- Whether the Resolution Plan ought to make provision for GNIDA keeping in view its ownership and security interest on the assets of the Corporate Debtor under UP Industrial Area Development Act, 1976?
- Whether the Adjudicating Authority is empowered to recall a Plan Approval Order?

Decision of the Court

- The Supreme Court allowed the Appeal filed by GNIDA and set aside the Orders passed by the Adjudicating Authority and the NCLAT holding that GNIDA is a secured creditor of the Corporate Debtor and ought to have been provided for in the Approved Resolution Plan accordingly.
- The Supreme Court while looking at the provisions and scheme of IBC observed that (a) a claimant may, in good faith, file his claim in a category to which it does not belong. However, what is important is the claim so submitted must be with proof. The Resolution Professional is required to verify the claim in accordance with the provisions of the IBC. Therefore, even if a claim has been filed in incorrect form prescribe under the Regulations, the Resolution Professional is required to give to consideration to the claim form submitted in the category to which it belongs provided it is verifiable on the basis of the proof submitted or the records of the Corporate Debtor.
- While relying on *Ghanashyam Mishra & Sons (P) Ltd v. Edelweiss Asset Reconstruction Co. Ltd*², the Supreme Court observed that the principal object of IBC is to provide for revival of the Corporate Debtor and to make it a going concern. The entire scheme of the IBC is as such that the Resolution Professional collates all the necessary information qua the Corporate Debtor and submit the same in the Information Memorandum so that a Resolution Applicant can submit Resolution Plan for the Corporate Debtor. The same is to be examined by the Adjudicating Authority by exercising its power of judicial review under Section 30(2), as explained in *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd*³.
- After noting the limited power of judicial review available with the Adjudicating Authority and observing that commercial wisdom of the CoC in approving a Resolution Plan may not be justiciable, the Supreme Court held that in exercise of the power of judicial review, the Adjudicating Authority including the Appellate Authority can always take notice of any shortcoming in the Resolution Plan in terms of the parameters specified in Section 30(2) of the IBC coupled with Regulations 37 and 38 of the CIRP Regulations. If any such shortcoming appears in the Resolution Plan, it may send the Resolution Plan back to the CoC for re-consideration.
- As regards recall of a Plan Approval Order is considered, the Supreme Court, after considering the power of the Adjudicating Authority under Rule 11 of the NCLT Rules, 2016 and the law of inherent powers laid down by a catena of judgements observed that any application, including an application seeking recall of a Resolution Plan Approval Order is maintainable if (a) an Order is passed without jurisdiction; (b) the aggrieved party is not served with notice of the proceedings; (c) Order has been obtained by obtained by fraud/misrepresentation of facts resulting in failure of justice.

HSA **Viewpoint**

Apart from clarifying the position of GNIDA as a secured creditor under the UP Industrial Area Development Act, 1976, this judgement also clarifies that Adjudicating Authority is not a mere rubber stamp and has wide powers even under the limited scope of judicial review of the Adjudicating Authority. This judgment also showcases the importance of principles of natural justice by safeguarding of the interest of a Claimant, be it after the approval of Resolution Plan by the Adjudicating Authority.

¹ (2023) 1 SCC 724

² (2021) 9 SCC 657

³ (2022) 1 SCC 401

Vijay Saini v. Shri Devender Singh & Ors

NCLAT | Judgment dated February 16, 2023 | Comp. App. (AT)(INS) No. 1194 of 2023 with Comp. App. (AT)(INS) No. 791 of 2023 and Comp. App. (AT)(INS) No. 982 of 2023

Background facts

- Two Appeals were preferred in the CIRP of Sidhartha Buildhome Pvt Ltd (**Corporate Debtor**) challenging the Order dated May 25, 2023 passed by the Adjudicating Authority accepting the proposal under Section 12A of the IBC permitting withdrawal of the CIRP of Corporate Debtor. A third Appeal was also preferred against Order dated July 13, 2023 passed by the Adjudicating Authority dismissing an application on the basis of the Order dated May 25, 2023.
- Pertinently, CIRP in respect of the Corporate Debtor was initiated on March 04, 2021. During the course of CIRP, both, the Resolution Plan received from one Alpha Corp Development Pvt Ltd and the withdrawal proposal submitted by the suspended promoter under Section 12 A of the IBC were put to vote pursuant to the 27th CoC meeting of the Corporate Debtor.
- Both, the resolution plan and the withdrawal proposal could not muster the required votes and stood rejected. Notably, as per the Resolution Professional, the withdrawal proposal stood rejected as only 40.15% votes by financial creditors in a class were 'Yes' whereas 29.20% voted 'No' and 11.08% of financial creditors in a class abstained from voting. Further the institutional financial creditors having 19.57% of voting share had rejected the withdrawal proposal.
- Subsequently, the AR of the homebuyers challenged the decision taken in terms of the minutes of the 27th CoC meeting observing that the withdrawal proposal was not approved and sought for quashing aside of such decision of the Resolution Professional.
- It was pleaded by the AR that the withdrawal proposal stood approved by 92.85% votes and the Resolution Professional has miscalculated the voting share of the creditors in class i.e., the homebuyers.
- The Adjudicating Authority vide its Order dated May 25, 2023 allowed the application filed by the AR and held that the Resolution Professional ought to have followed the method prescribed under Section 25A(3A) of the IBC and come to a conclusion that since more than 50% of the voting has been done in favour of the withdrawal proposal, he should have taken it as 100% since the financial creditor have to be treated as a class.
- This Order was challenged by the Resolution Professional and a homebuyer. It was argued that voting on a withdrawal proposal under 12A is not same as a voting on Resolution Plan under Section 30 of the IBC. It was submitted that 90% threshold for withdrawal of Resolution Plan by the CoC has been kept for purpose and object. The voting on the application under Section 12A is not voting on a Resolution Plan or voting where majority of votes of homebuyers have to be looked into.
- On the other hand, the Respondent, suspended promoter and the homebuyers argued that the Order of the Adjudicating Authority is in accord with the statutory scheme. The decision of the homebuyers as a class is binding on each homebuyer and majority of homebuyers have decided to approve Section 12A proposal. The Respondents also placed reliance on judgement passed by the Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association & Ors v. NBCC (India) Ltd & Ors⁴, to say that the Resolution Professional is duty bound to follow the mechanism prescribed under Section 25A(3A) for counting the votes of the financial creditors in a class.

Issue at hand?

- Whether the voting by financial creditors in a class on a proposal for withdrawal under Section 12A is to be calculated as per Section 25A(3A) of the IBC?

Decision of the Tribunal

- The NCLAT allowed the Appeals filed by the parties holding that the manner of computation of voting qua the financial creditors in a class is different for voting on a withdrawal proposal and that on a Resolution Plan.
- The NCLAT while noticing the necessary statutory provisions governing withdrawal of an insolvency application observed that the voting share for proposal under Section 12A has been kept at a very high threshold and the constitutionality of the same was upheld by the Supreme Court in Swiss Ribbons Pvt Ltd and Anr v. Union of India and Ors⁵.
- The NCLAT was of the view that the Adjudicating Authority failed to notice the proviso to Section 25A(3A) of IBC which specifically read that for a vote to be cast in respect of an application under Section 12A, the authorized representative shall cast his vote in accordance with the provisions of sub-Section (3), i.e. the AR representing several financial creditors shall cast his

⁴ (2022) 1 SCC 401

⁵ (2019) 4 SCC 17

HSA Viewpoint

In our view, the NCLAT has rightly differentiated between the role of financial creditors while approving the Resolution Plan vis-à-vis its role while allowing withdrawal of the CIRP.

vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share.

- The NCLAT held that for computing voting with regard to 12A proposal, the voting has to be computed as per Section 25A (3A) proviso r/w Section 25A (3). As per Section 25A (3), if the authorized representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor to the extent of his voting share. When the statute i.e. Section 12A provides 90% voting for approval of Section 12A proposal, 90% of the voting share of the creditor in class have to be taken into consideration. Since voting by each homebuyer who represented creditor in class has to be computed as per his voting share and adding all vote shares of the creditor in class with any other financial creditor if it is at least up to 90% only then 12A proposal is held to be passed.
- While holding the above, the NCLAT rejected the submission made by the Respondent to place reliance on Jaypee Kensington (Supra) and stated that the decision in Jaypee Kensington (Supra) was in the context of Resolution Plan and not a withdrawal proposal.
- Further, the NCLAT also upheld the locus of the Resolution Professional as an aggrieved party under Section 61 and observed that the Resolution Professional is duty bound to ensure that the CIRP process is conducted in accordance with provisions of IBC. In the facts of the present case where opinion of the Resolution Professional, who was Chairman of the CoC holding that 12A proposal is not approved has been overturned by the Adjudicating Authority, the NCLAT was of the view that the Resolution Professional is an aggrieved person from the said decision since the decision of the Adjudicating Authority directly overturns the decision of the Resolution Professional.

Navyuga Engineering Company Ltd v. Mr. Umesh Garg & Ors

NCLAT | Judgment dated February 16, 2024 | Comp. App. (AT) (Ins) No. 783 of 2023

Background facts

- This Appeal has been preferred by an unsuccessful resolution applicant against the Order dated May 26, 2023 passed by the Adjudicating Authority disqualifying the Appellant under Section 29A(c) of the IBC to submit a Resolution Plan for Athena Demwe Power Ltd (**Corporate Debtor**).
- Pertinently, the Corporate Debtor is an SPV incorporated for the execution of Demwe hydro-electric project in the year 2007. The Appellant and the Corporate Debtor executed an MOU dated March 15, 2013 for infusion of equity capital of 30% by the Appellant. The Appellant invested a sum of INR 235.35 crore through its 100% subsidiary Regina Infrastructure Pvt Ltd (**RIPL**). Subsequently, the account of the Corporate Debtor was declared as NPA on May 31, 2013. Thereafter, in a JLM held on October 01, 2015, it was decided that the Corporate Debtor required financial assistance and accordingly, another MOU dated March 28, 2016 was executed inter alia between the Appellant and the Corporate Debtor where it was decided that the Appellant shall invest equity share in the Corporate Debtor so as to become 51% shareholders.
- Subsequently, CIRP in respect of the Corporate Debtor came to be initiated on September 28, 2017. It is relevant to mention here that the Appellant transferred its entire shareholding in RIPL on September 22, 2017 for consideration of INR 1 Lakh.
- Pursuant to the CIRP, the Appellant submitted its Resolution Plan for the Corporate Debtor on June 04, 2018. However, the CoC in its meeting held on June 15, 2018 opined that the Appellant is not eligible to submit a Resolution Plan under Section 29A of the IBC. The same was challenged by the Appellant before the Adjudicating Authority.
- The Adjudicating Authority after hearing the parties concluded that the Appellant is disqualified under Section 29A, which Order was challenged before the NCLAT.
- The Appellant argued the Adjudicating Authority committed error in holding that the Appellant is barred under Section 29A as on the date when the Corporate Debtor's account was declared NPA, the Appellant was neither in the management nor was the Promoter of the Corporate Debtor. Since the objective behind Section 29A is to bar the person who is responsible for the NPA, the Appellant not being in control of the Corporate Debtor at that point in time, cannot be disqualified under Section 29A of IBC.
- On the other hand, the Respondents including the Resolution Professional and the CoC argued that the Appellant held 21.55% equity shares through its subsidiary RIPL and had invested a sum of INR 236.11 crore. Further, in accordance with the terms of the second MOU dated March 28, 2019, the Appellant had been given both de jure and de facto control of the Corporate Debtor. Therefore, in view of proviso to Section 29A (c), persons, who are in management of the Corporate Debtor and do not take steps for paying all the debts of NPA are clearly ineligible to submit a Resolution Plan.

Issue at hand?

- Whether Section 29A (c) of IBC disqualifies on the persons who were in management and control of the Corporate Debtor at the time when the Corporate Debtor account was declared NPA?

Decision of the Tribunal

- The NCLAT while considering the scope and ambit of Section 29A of the IBC and the findings of the Supreme Court in *Arcelormittal India Pvt Ltd v. Satish Kumar Gupta and Ors*⁶ held that Section 29A(c) does not only disqualify those in management and control of the Corporate Debtor at the time when its account was declared NPA, but also disqualifies those, who were in management and control of the Corporate Debtor and in close proximity of time, before submission of Resolution Plan, who failed to clear the debts of the Corporate Debtor.
- The NCLAT observed that an interpretation of Section 29A (c) of IBC to say that only those persons, who were in management and control of the Corporate Debtor at the time when the Corporate Debtor was declared as an NPA, will narrow the operation of Section 29A and shall not be in accordance with the object and purpose of inserting Section 29A in IBC.
- While relying on Para 60 of Arcelor Mittal (Supra), the NCLAT held that persons in the management and control of the affairs of the Corporate Debtor, who led the Corporate Debtor to slip into NPA and persons, who are in the management and control of the affairs of the Corporate Debtor in the close proximate of time, before the submission of Resolution Plan, who failed to pay the debt of the Corporate Debtor, are also ineligible under Section 29A(c) of the IBC to submit a Resolution Plan.
- Further, the NCLAT placing its reliance on the clauses of the MOU entered into between the parties, held that the Appellant exercised control over the Corporate Debtor and is ineligible to submit a Resolution Plan for the Corporate Debtor under Section 29A of the IBC.

HSA **Viewpoint**

In our view, this decision by the NCLAT affirms the sanctity of the IBC and safeguards the interest of the stakeholders by keeping the undesired persons out of the CIRP.

⁶ (2019) 2 SCC 1



RECENT DEALS

Resolution of Sarga Hotel Pvt Ltd

- The NCLT, Kolkata bench vide Order dated January 4, 2024 approved the Resolution Plan submitted by the Shriram Multicom Pvt Ltd, the Successful Resolution Applicant (**SRA**), in the CIRP of Sarga Hotel Pvt Ltd (**Corporate Debtor**).
- Vide Order dated February 11, 2022, the NCLT, Kolkata Bench directed the initiation of the CIRP of the Corporate Debtor and appointed Mr. Avishek Gupta as the Interim Resolution Professional (**IRP**), who was later confirmed as the Resolution Professional (**RP**) for the Corporate Debtor.
- In terms of Section 25(2)(h) of the IBC read with Regulation 36A (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**), invitation in Form G for Expression of Interest (**Eoi**) was published. The last date of submission was announced as February 25, 2022. Revised form was published on April 28, 2022 and the last date for submission was May 18, 2022.
- The RP provided RFRP, Information Memorandum and all other documents to Prospective Resolution Applicants (**PRAs**) on July 23, 2022. Last date of submission of Resolution Plans was initially stipulated as July 23, 2022. The RP filed application for extension of and same was extended vide order dated August 8, 2022, extending the CIRP of the Corporate Debtor up to November 8, 2022.
- Pursuant to the process, four Resolution Plans were received by the RP. Subsequently, during the 15th CoC of the Corporate Debtor was approved by the CoC with 100% voting shares. Letter of Intent to the SRA was issued on May 31, 2023, which was unconditionally accepted by the SRA and the SRA duly submitted its Performance Bank Guarantee dated November 27, 2022 for an amount of INR 25 crore.
- The value of the Resolution Plan submitted by the SRA is approximately INR 301 crore. Under the Resolution Plan, an amount of INR 300.33 crore has been provided to the secured financial creditors, whereas the unsecured financial creditors have been allocated an amount of INR 0.23 crore. Further, all the operational creditors, including employees and workmen, have been paid in terms of the provisions of the IBC, a sum of INR 0.42 crore.
- It is pertinent to note that since the reliefs sought by the SRA were out of the purview of the IBC and required the permissions from the respective departments of the Government for such reliefs, waivers, and concessions, therefore owing to the same, the SRA was granted a time of 1 year as prescribed under Section 31(4) of the IBC to comply with the statutory obligations/seeking sanctions from governmental authorities.

- Placing reliance on the position laid down by the Supreme Court on *Ghanashyam Mishra and Sons Pvt Ltd Vs. Edelweiss Asset Reconstruction Company Ltd*⁷ observed that all claims which do not form part of the Resolution Plan stand extinguished.
- In terms of the above, the NCLT, Kolkata bench, held that the Resolution Plan as approved by the CoC was in accordance with Sections 30 and 31 of the IBC and also compliant with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Holding thus, the NCLT, Kolkata Bench approved the Resolution Plan.

Resolution of Balaji Paper and Newsprint Pvt Ltd

- The NCLT, Kolkata bench vide Order dated January 12, 2024 approved the Resolution Plan submitted by Pinax Paper Mills Pvt Ltd and Pinax Steel Industries Pvt Ltd, the Successful Resolution Applicant (**SRA**) in the CIRP of Balaji Paper and Newsprint Pvt Ltd (**Corporate Debtor**).
- Vide Order dated May 6, 2022, the NCLT, Kolkata Bench directed the initiation of the CIRP of the Corporate Debtor and appointed Mr. Bijay Murmuria as the Interim Resolution Professional (**IRP**) and his appointment as the Resolution Professional (**RP**) was subsequently confirmed. However, on August 9, 2023, Mrs. Rachna Jhunjhunwala was appointed as the RP by replacing Mr. Bijay Murmuria.
- The CoC of the Corporate Debtor was constituted of 2 secured financial creditors being Indian Overseas bank having 41.38% voting share and Indian Bank, having 58.62% voting share. In terms of Section 25(2)(h) of the IBC read with Regulation 36A(1) of CIRP Regulations, invitation in Form G for Expression of Interest (**EoI**) was first published on July 16, 2022 and the last date to submit EoI was August 10, 2022. Pursuant thereto, Eleven EoIs were received by the RP.
- Thereafter, another extension of 104 days was granted by the NCLT and subsequently, 4 Resolution Plans were received for Resolution of the Corporate Debtor.
- In the 13th CoC meeting, the Resolution Plan submitted by the SRA was approved with a 100% voting share in favour of the Plan. The Letter of Intent was issued on October 07, 2023 which was unconditionally accepted by the SRA and the SRA accordingly furnished the Performance Security of an amount of INR 5.4 crore.
- The value of the Resolution Plan submitted by the SRA and approved by the NCLT is INR 74 crore. Under the Resolution Plan, an amount of INR 52.40 crore has been provided to the secured financial creditors. Further, all the operational creditors, including employees and workmen, have been provided a total amount of INR 10 crore.
- It is pertinent to note that since the reliefs sought by the SRA were out of the purview of the IBC and required the permissions from the respective departments of the Government for such reliefs, waivers, and concessions, therefore owing to the same, the SRA was granted a time of 1 year as prescribed under Section 31(4) of the IBC to comply with the statutory obligations/seeking sanctions from governmental authorities.
- Further, placing reliance on the position laid down by the Supreme Court on *Ghanashyam Mishra and Sons Pvt Ltd Vs. Edelweiss Asset Reconstruction Company Ltd*⁸, observed that all claims which do not form part of the Resolution Plan stand extinguished.
- In the view of the above, the NCLT, Kolkata bench, held that the Resolution Plan as approved by the CoC was in accordance with Sections 30 and 31 of the IBC and also compliant with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Holding thus, the NCLT, Kolkata Bench approved the Resolution Plan.

Resolution of Magppie International Ltd

- The NCLT, New Delhi bench vide Order dated February 09, 2024 approved the Resolution Plan submitted by Worldfa Exports Pvt Ltd, the Successful Resolution Applicant (**SRA**) in the CIRP of Magppie International Ltd (**Corporate Debtor**).
- Vide Order dated March 13, 2020, the NCLT, New Delhi Bench directed for initiation of the CIRP of the Corporate Debtor and appointed Mr. Ashwani Kumar Gupta as the Interim Resolution Professional (**IRP**). However, pursuant to the first CoC meeting, Mr. Vivek Raheja was appointed as the RP by the CoC.
- In terms of Section 25(2)(h) of the IBC read with Regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**), the RP published invitation in Form G for Expression of Interest (EoI) on September 10, 2020. The RP

⁷ (2021) 9 SCC 321

⁸ (2021) 9 SCC 321

received 5 EOIs for the Corporate Debtor, however, only two Prospective Resolution Applicants (**PRA**) submitted their Resolution Plan for the Corporate Debtor.

- Thereafter, both the Resolution Plans were put to vote and pursuant to the 15th CoC meeting of the Corporate Debtor, the Resolution Plan submitted by the SRA was approved by 77.45% voting share and the RP filed IA 5227 of 2021 seeking approval of the Resolution Plan. The NCLT vide its Order dated July 06, 2023 directed the CoC to reconsider the distribution of amount proposed in the Resolution Plan.
- Pursuant thereto, the 16th CoC meeting of the Corporate Debtor was convened to decide the distribution of Plan value. Since claim of 1 unsecured financial creditor was satisfied in full under SARFAESI proceedings, the amount of claim was revised to NIL and the voting shares were accordingly revised. Subsequently, during the 17th CoC, the revised distribution was approved by a voting share of 92.5% by the CoC and the Resolution Plan was placed before the NCLT for approval under Section 31 of the IBC.
- The SRA has proposed payment of INR 29 crore to the financial creditors and has reserved a sum of INR 80 lakh for the payment of CIRP Cost, under the approved Resolution Plan. Notably, the fair value of the Corporate Debtor is INR 34.39 crore whereas the Liquidation Value of the Corporate Debtor is INR 25.53 crore.
- The SRA has also submitted a performance security of INR 3 crore in the bank account of the Corporate Debtor.
- It is pertinent to note that many reliefs sought by the SRA were out of the purview of the IBC and required the permissions from the respective departments of the Government for such reliefs, waivers, and concessions, therefore owing to the same, the resolution applicant was permitted to seek appropriate sanctions from governmental authorities.
- Placing reliance on the position laid down by the Supreme Court on *Ghanashyam Mishra and Sons Pvt Ltd Vs. Edelweiss Asset Reconstruction Company Ltd Lalit Kumar Jain v Union of India & Ors* (Supra) and *Lalit Kumar Jain v Union of India & Ors* observed that there's a waiver with regards to extinguishment of claims that arose pre-CIRP and therefore all claims which do not form part of the resolution plan stand extinguished.
- In the view of the above, the NCLT, New Delhi bench, held that the Resolution Plan as approved by the CoC was in accordance with Sections 30 and 31 of the IBC and also compliant with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Holding thus, the NCLT, New Delhi Bench approved the Resolution Plan.



COMPANIES ADMITTED TO INSOLVENCY IN JAN–FEB 2024

Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Industry
1	CBS Holdings Pvt Ltd	New Delhi	Financial intermediation
2	Ritzy Chemicals Pvt Ltd	New Delhi	Chemical industry
3	BCC Infrastructures Pvt Ltd	New Delhi	Real estate
4	DCOM Systems Ltd	Ahmedabad	Software consultancy and related activities
5	R. Piyarelal Iron & Steel Pvt Ltd	Kolkata	Manufacturing of iron & steel
6	Nandanam Tiles and Sanitaries Pvt Ltd	Kochi	Manufacturing/wholesale/retail of household products
7	Vadera Tradelink Pvt Ltd	Jaipur Bench	Retail stores
8	Kasargod Power Corporation Ltd	Kochi	Electricity production and distribution
9	Kandol Metal Powders Manufacturing Co Pvt Ltd	Jaipur	Manufacturing of metal products
10	Edweena Real Estate Pvt Ltd	Mumbai	Real estate
11	Four Care Hospital Pvt Ltd	Mumbai	Medical industry
12	Kalka Home Developers Pvt Ltd	New Delhi	Real estate
13	Shipra Estate Ltd	New Delhi	Real estate
14	RKB Global Ltd	Mumbai	Manufacturing of metal products
15	Supreme Bituchem India Pvt Ltd	Mumbai	Manufacturing of chemical products
16	Green India Building Systems & Services Pvt Ltd	Mumbai	Construction business
17	M.G. Finvest Pvt Ltd	New Delhi	Financial intermediation
18	Samco Securities Ltd	Mumbai	Financial intermediation
19	Abhisar Impex Pvt Ltd	New Delhi	Wholesale business
20	Optus Laminates Pvt Ltd	Ahmedabad	Manufacture of products of wood and related products
21	Sanghvi Land Developers Pvt Ltd	Mumbai	Construction business
22	Avail Holding Ltd	New Delhi	Financial intermediation
23	Manan Apparels Ltd	Mumbai	Apparel business
24	Agson Global Pvt Ltd	New Delhi	Wholesale business
25	Umritha Infrastructure Development LLP	New Delhi	Real estate
26	Mission Holdings Pvt Ltd	New Delhi	Financial intermediation
27	Sundha Road Developers Pvt Ltd	Jaipur	Construction business
28	Wizard Pvt Ltd	Jaipur	Wholesale business
29	Kratos Energy & Infrastructure Ltd	Mumbai	Production and distribution of electricity
30	Skil Infrastructure Ltd	Mumbai	Machine manufacturing
31	ABC Rail Road Products Pvt Ltd	Allahabad	Manufacturing of metal structures
32	Indrajit Power Pvt Ltd	Mumbai	Construction business
33	Nexrise Publications Pvt Ltd	Chennai	Knowledge publications
34	Ananya Wood Pvt Ltd	Kolkata	Manufacture of products of wood and related products
35	Mycozoom Biotech India Pvt Ltd	New Delhi	Chemical industry
36	Vidhata Metal Pvt Ltd	New Delhi	Casting of metals
37	Aaban Apparels and Realcon Pvt Ltd	Mumbai	Apparel business
38	Shivom Investment & Consultancy Ltd	Mumbai	Legal and tax consultancy
39	Faime Makers Pvt Ltd	Mumbai	Construction business
40	Allied Software Development Pvt Ltd	New Delhi	Software business
41	Interjewel Pvt Ltd	Mumbai	Manufacturing of diamonds

42	Whiskers Infracare Pvt Ltd	Mumbai	Consultancy business
43	Jogeshwari Breweries Pvt Ltd	Mumbai	Manufacturing of beverages
44	Morarjee Textiles Ltd	Mumbai	Textile business
45	Sports Technologies Pvt Ltd	Mumbai	Multimedia activities
46	Vivaan Multistructures Ltd	Mumbai	Construction activities
47	Dhara Cements (India) Pvt Ltd	Ahmedabad	Manufacturing of non-metallic minerals
48	Neocortex Life Sciences Pvt Ltd	Hyderabad	Medical services
49	Carnival Techno Park Pvt Ltd	Mumbai	Financial intermediation
50	Ananda Bharathi Fertilizers (India) Pvt Ltd	Mumbai	Agricultural activities
51	DSK Milktronics Pvt Ltd	Mumbai	Manufacturing of domestic appliances
52	Supreme Housing and Hospitality Pvt Ltd	Mumbai	Construction business
53	Ebullient Cables Pvt Ltd	Allahabad	Consultancy business
54	Ramos Ceramic Pvt Ltd	Ahmedabad	Manufacturing of non-metallic mineral products

Companies directed to be liquidated

#	Name of Corporate Debtor	NCLT Bench	Industry
1	Borkar Colorpacks Pvt Ltd	Mumbai	Printing services
2	Adgaonkar Saraf Pvt Ltd	Mumbai	Jewellery & fashion accessories
3	WB Precision Engineering Solutions Pvt Ltd	Mumbai	Software business
4	Fipola Retail (India) Pvt Ltd	Chennai	Manufacture of beverages
5	DRD Gems LLP	Mumbai	Jewellery business
6	Gitanjali Gems Ltd	Mumbai	Jewellery business
7	Anirudh Civil Engineers and Contractors Pvt Ltd	Mumbai	Construction business
8	Eco Auto Components Ltd	Chandigarh	Manufacturing of automative parts
9	IBRIDGE Solutions Pvt Ltd	Mumbai	Multimedia Business
10	SAV Wires Pvt Ltd	Kolkata	Manufacturing of basic iron & steel
11	Shree Sai Rolling Mills India Ltd	Guwahati	Manufacturing of basic iron & steel
12	Shree Sai Smelters India Ltd	Guwahati	Manufacturing of basic iron & steel
13	Champion Agro Ltd	Ahmedabad	Agriculture business
14	Map Refoils India Ltd	Ahmedabad	Production and processing of meat, etc.
15	DNB Impex Pvt Ltd	Ahmedabad	Textile business
16	Shree Sai Prakash Alloys Pvt Ltd	Guwahati	Manufacturing of basic iron & steel
17	Shi Lakshmi Saraswati Spintex Ltd	Chennai	Textile business
18	Vrone Energy Pvt Ltd	Chennai	Construction business
19	Jharkhand Mega Food Park Pvt Ltd	Kolkata	Production and processing of meat, etc.
20	Crystal Facilities Management Pvt Ltd	New Delhi	Education business

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