

Landmark Judgments by the Hon'ble NCLAT 16th to 30th September, 2022



1. Reliance Commercial Finance Ltd. v. Darode Jog Builder Pvt. Ltd. (D.O.J. – 19.09.2022)

In the instant case the Appellant/Corporate Debtor is aggrieved from the Order dated 11.07.2022 passed by the AA Mumbai where Section 7 petition filed by the Financial Creditor was listed, during the hearing, the Appellant offered to settle the matter, the Financial Creditor was unwilling to do the same, pursuant to the same the AA held that if Appellant does not deposit the settlement amount offered within 45 days the Financial Creditor has right to restore the proceedings under Section 7 of the IBC.

The issue that arose before this Tribunal is that since the Appellant was willing to settle the matter and it was the Financial Creditor who was not willing to do the same the AA has erred in passing an order, where it has reserved the right of the Financial Creditor to restore the Section 7 Petition if the amount offered is not deposited. The Hon'ble NCLAT dismissed the Appeal relying upon "Vidarbha Industries Power Limited Vs. Axis Bank Limited" passed by Hon'ble Apex Court where it was held that the AA even after considering that there is a debt and default is required to apply its mind including feasibility of the initiation of the CIRP. The NCLAT further held that there is no error in the Order of the AA where such liberty is granted to the Financial Creditor.

Link: t.ly/NEQv

2. Namdeo Ramchandra Patil & Anr Vs. Vishal Ghisulal Jain & Anr (D.O.J – 19.09.2022)

In the instant case, appeal was filed by the Landowners/Appellant who were aggrieved from the order of the AA. The Landowners/Appellants entered into a development agreement with Corporate Debtor and as a consideration for developing the land of Appellants were promised 45% of the constructed area. Further, CIRP of the Corporate Debtor was initiated by the Bank U/s 7 of the IBC 2016. Appellants raised claim as Financial Creditor before the RP which included total value of the flats and shops along with the interest for delayed possession. The issue that arose for the consideration before this Tribunal was whether landowners who were allotted flats as a consideration for land given by them for development can claim to be financial creditor within the ambit of Section 5 (8) of the IBC 2016.

Hon'ble NCLAT held that the sine qua non for a debt to be a financial debt is 'disbursement against the time value of money' and when any amount is raised from an allotment under real estate. Disbursement has been defined by the Hon'ble Tribunal to mean 'paying out of money from a fund or for settlement of a debt or towards a liability that is owned to a third party or an amount of money paid for a particular purpose'. NCLAT held that when money is raised from the allottee of a real estate project that same is covered under Section 5(8) of IBC. However, the same is not the case for the landowner who give his land to a developer in exchange of some portion of the project. The NCLAT noted that even if the Appellants who are allotted flats are allottee within the meaning of Section 2(d) of the RERA that cannot imply that their transaction is financial debt within the meaning of Section 5 (8). Hon'ble tribunal reiterated that the essential element of a financial debt 'Disbursement against time value of money' has to be fulfilled for a transaction to become a financial debt and same is missing in the land development agreement between the Appellants and the Corporate debtor, hence it is not a financial debt.

3. M/s. Netfinity Solutions Vs. M/s. Karvy DigiKonnnect Ltd. (D.O.J 27-09-22)

In the instant case Operational Creditor issued demand notice under Section 8 of the IBC calling Corporate Debtor to pay the amount in default with interest. Due to Non- payment of the dues, the Operational Creditor filed an application u/s 9 of IBC. Post the filing of the same both the parties voluntarily entered into a Settlement Agreement. In accordance to the Settlement Agreement, the Appellant prayed for withdrawal of the Section-9 application and the same was dismissed as withdrawn. Subsequently, the Corporate Debtor defaulted in making payment as per the terms of the Settlement Agreement and Appellant was constrained to seek revival of Section - 9 Application. The AA held that since the claim amount u/s 9 application is Rs. 46,64,249/- it would not be feasible to entertain the Section - 9 application, hence the application for revival was dismissed without cost.

Aggrieved by the same Appellant approached the NCLAT held that it is a substantive condition that has to be fulfilled to initiate CIRP. The AA rightly took the view that an Application u/s 9 for claim of an amount which is less than Rs 1 Cr. cannot be entertained.

Link: t.ly/gcmz

4. Mr. Sanjay Chaturvedi Vs. Shamken Cotsyn Ltd. (D.O.J - 28-09-22)

The instant appeal was filed by the suspended director of Corporate Debtor seeking setting aside of the Liquidation order in view of scheme of arrangement or compromise was pending consideration. Pertinently, the Ld. NCLT ordered for liquidation of corporate debtor as no resolution plan was submitted. It is also relevant to note that in the order initiating CIRP of the CD the Hon'ble NCLT in its order had considered the plea of CD in regard to pendency of scheme of arrangement.

The Hon'ble NCLAT upon hearing the submissions in detail was pleased to observe and hold that there is no occasion for consideration of any scheme or arrangement which was pending consideration since the year 2008 for liquidation of the Corporate Debtor. The Hon'ble NCLAT observed that after a moratorium has been imposed under Section 14 of Code, all proceedings have to be kept in abeyance. Further when Order of Liquidation is passed, any scheme or arrangement can only be placed by the Liquidator for consideration before the AA. Hence, the Hon'ble NCLAT upheld the Order of liquidation and stated that any scheme of arrangement with the creditors can be brought only by the Liquidator. Hence the appeal was dismissed.

Link: t.ly/l_lw

5. Gaurav Agarwal Vs. CA Devang P Sampat Liquidator of Maa Mahamaya Steels Pvt. Ltd. (D.O.J 28-09-22)

In the instant case the Appellant neither received the free copy nor the certified copy of the Order of the AA. The Appellant filed the Application for certified copy of the Order of AA after the expiration of the 30 days of the Limitation period u/s 12(2) of the Limitation Act, 1963 and the appeal was filed after the expiry of extension i.e 45 days. Appellant contended that there was only 9 days delay of filing the appeal after the expiration of the limitation period. The issue for consideration is whether the appeal can be filed beyond 45 days of the limitation period. Therefore, the Appellant filed for condonation of delay in filing this appeal.

NCLAT held that when application for obtaining certified copy of the order is applied after the period of limitation, no entitlement for benefit under Section 12(2) of the Limitation Act can be provided to the Appellant. Period of limitation starts and could not be prevented when judgment is delivered by the Adjudicating Authority in open court. Appellant can neither wait for free of cost certified copy nor he is prevented from applying for certified copy of the order sought to be challenged in appeal. Hence, the appeal been filed beyond 45 days and delay of more than 15 days beyond the period of 30 days cannot be condoned.

Link: t.ly/vTSz



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