

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



1. Base Realtors Pvt. Ltd. Vs Grand Realcon Pvt. Ltd. (NCLAT-New Delhi) [D.O.J-15.11.2022]

In the instant case, the Applicant/ Appellant had filed an application under Section 7 of the Code in respect of interest of three quarters which accrued and became payable as debt. The application filed under Section 7 of the Code was dismissed by the Adjudicating Authority on the ground that only the interest amount would not fall within the definition of financial debt until and unless principal amount has also become due and payable. Aggrieved by the impugned order of the AA, an appeal was preferred before the Hon'ble NCLAT. The issue that arose for consideration before the Hon'ble NCLAT was, whether an application under Section 7 of the Code can be filed and maintained in respect of the component of interest which became due and payable without asking for the principal amount which has not yet become due and payable?

The Hon'ble NCLAT placed reliance on Innovative Industries Ltd. Vs. ICICI Bank & Orator Marketing Pvt. Ltd. Vs. M/s Samtex Desinz Pvt. Ltd and held that an application filed under Section 7 of the Code could be maintained in respect of the component of interest which became due and payable, without asking for the principal amount which has not yet become due and payable.

Link: t.ly/t4K3

2. Ashok Kumar Tyagi Vs. UCO Bank (NCLAT-New Delhi) [D.O.J- 21.11.2022]

In the instant case an Appeal was preferred before the Hon'ble NCLAT by the Suspended Director of the Corporate Debtor challenging the Order initiating CIRP against the Corporate Debtor. The Hon'ble NCLAT vide order stayed the order initiating CIRP. The issue arose for consideration before the Hon'ble NCLAT was, whether the Corporate Debtor is entitled to be restored and be permitted to function as it was functioning prior to CIRP?

The Hon'ble NCLAT held that once the order admitting CIRP has been stayed by the NCLAT, the IRP is not entitled to discharge any function and that the Corporate Debtor also cannot be restored as it was functioning prior to admission of Section 7 application. Reliance was placed upon "Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association" passed by the Hon'ble Supreme Court. However, to ensure the day-to-day functioning of the CD as a going concern the court allowed the Chief Executive Officer (CEO)/Officers of the Corporate Debtor authorized to operate the Bank Accounts to make payment of wages of workers, workmen and employees subject to the submission of all details of expenditure on weekly basis to the IRP as well as to the Suspended Managing Director of the Corporate Debtor.

Link: t.ly/B5xN

3. Avneet Goya Vs. Radha Kishan Gobind Ram Ltd.(NCLAT-New Delhi)[D.O.J-22.11.2022]

In the instant case a Petition under Section 9 of the Code was filed. However, the same was rejected by the Ld. Adjudicating Authority. The Hon'ble AA had also made certain observation while rejecting the said Petition. Aggrieved, by the observation made by the Hon'ble AA, an Appeal was preferred contending that certain observations that were made in the order may be prejudicial to the Appellant, if the matter is taken in a regular court for establishing case of the Appellant. The issue arose for consideration was, whether in Section 9 proceeding, the Court can enter into evidence and record findings like a Civil Court.

The Hon'ble NCLAT held that in Section 9 proceeding the Court has not to enter into evidence and record findings like a Civil Court.

Link: t.ly/1aHq

4. Varrsana Employee Welfare Association Vs. Anil Goel, Liquidator of Varrsana Ispat Ltd.(NCLAT-New Delhi)[D.O.J-25.11.2022]

The question that arose for consideration before the Hon'ble NCLAT was whether the Liquidator should include one of the representatives of the Workmen/Employees of the 'Corporate Debtor' in the Stakeholders Consultation Committee ('SCC') of the 'Corporate Debtor' irrespective of the fact that these Employees have a subsisting 'Claim' or not?

The Hon'ble NCLAT held that Regulation 31A flows from Regulation 31 (Liquidation Regulations) and has to be read together and interpreted in its truest sense keeping the objective of the Code. Regulations 31 & 31A specify that when the Employees have no subsisting Claim, they cannot be included in the list of Stakeholders, thereby meaning that if the Workers are not specifically included in the list of Stakeholders, under Regulation 31, they cannot be made a part of the SCC under Regulation 31A(1). It also held that Claim of Gratuity is payable only at a future date in the happening of any event like retirement, resignation, termination, death, etc., and therefore, it cannot be construed as a Claim subsisting to be included in the list of Stakeholders and consequently seeking a place in the SCC.

Link: t.ly/hqYz



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