

Landmark Judgments by the Hon'ble NCLAT 1st to 15th February, 2023



Mrs. C.G. Vijyalakshmi Vs. Shri Kumar Rajan, RP Hindustan Newsprint Ltd. (D.O.J 08. 02. 2023)

In the instant case, the Hon'ble AA had approved the Resolution Plan, wherein the plan provided for payment of 16.31% of the entire admitted claims of the employees and 35.13% of the admitted claims of employees/workmen towards gratuity. Aggrieved, by the said payment, an Appeal was preferred before the Hon'ble NCLAT. The key element of these appeals is whether the Resolution Plan meets the requirement of Section 30(2)(e) of the Code and whether PF, Gratuity and Workmen/Employees dues have to be paid in full.

The Hon'ble NCLAT held that PF, Gratuity and Workmen/Employees dues have to be paid in full and placed reliance on Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia RP of Jet Airways (India) Ltd. & Ors. And Ebix Singapore Pvt. Ltd. Vs. CoC of Educomp Solutions Ltd. & Anr wherein it was held that non-payment of full provident fund and gratuity is violative of S. 30(2)(e) IBC.

Link: t.ly/BOP8

Greymatter Entertainment Pvt. Ltd. Vs. Pro Sportify Pvt. Ltd. (D.O.J- 09.02.2023)

In the instant case, the Petitioner had provided certain services and lieu of the default committed thereof, a Demand Notice under Section 8 was served. However, there was no response to the same. Accordingly, an Application under Section 9 of the Code was filed before the Hon'ble AA. That the respondent in his reply pleaded that there was a "pre-existing dispute" between the parties. That in view of the "pre-existing dispute" the Hon'ble AA had dismissed the said Petition. Aggrieved by the same an appeal was preferred before the Hon'ble NCLAT. The issue that arose consideration was if Demand Notice issued u/s 8 of IBC is not replied, whether Corporate Debtor can raise pre-existing dispute in reply to the petition filed under Section 9?

The Hon'ble NCLAT observed that neither Sections 8 nor Section 9 of the Code indicate that in the event Reply to Demand Notice was not filed within 10 days, the Corporate Debtor is precluded from raising the question of dispute or pleading that there are no amount due and payable, the Corporate Debtor is not prevented from establishing by way of a Reply and relevant documents, any Pre-Existing Dispute.

Link: t.ly/C-FG

Noble Marine Metals Co.WLL Vs. Kotak Mahindra Bank Ltd. (D.O.J. 09.02.2023)

In the instant case, an Application for approval of Resolution Plan was filed before the Hon'ble AA. However, certain creditors had also preferred and Application dissenting the Resolution Plan and further seeking permission of Adjudicating Authority for placing Resolution Plan before the COC for withdrawal of consent to the Resolution Plan dealing with relinquishment of the rights of the secured creditor to enforce personal guarantee on the grounds that the same violates Section 128 of the Contract Act and therefore violates of sec. 30(2)(e) of the Code. The Hon'ble AA held that if majority of the COC has taken a view that matter should go back for reconsideration before the COC, no impediment will be caused to allow the COC to have a relook in the issue. Accordingly, the AA held that it is open to the COC to deliberate the plan in accordance with law. Aggrieved by the same an appeal was preferred by certain financial creditors.

The Hon'ble NCLAT observed that the issue in the case is whether Resolution Plan can be sent back for carrying out any changes? The Hon'ble NCLAT held that present is a case where CoC is not asking to withdraw from the plan or asking for reviewing the entire Resolution Plan rather CoC has asked for leave of the court for deleting clause in the plan which sought to release the promoters from personal guarantee given to the financial Creditors. Therefore, order of the Adjudicating authority was upheld.

Link: t.ly/clHhO

Express Resorts and Hotels Ltd. Vs. Amit Jain RP Neesa Leisure Ltd. (D.O.J- 09.02.2023)

In the instant case the RP had filed an Application for approval of Resolution Plan. However, on an Application by other Resolution Applicants whose plans were rejected, the Adjudicating Authority had sent back the Resolution Plan before the CoC for its reconsideration and further allowed those Resolution Applicants, who had approached the Adjudicating Authority to submit the Resolution Plan.

Aggrieved by the impugned order, this Appeal has been filed by the Successful Resolution Applicant. The issue that arose consideration was whether the Resolution Plan can be sent back for reconsideration by the CoC in case Resolution Plan has been approved and submitted to AA?

The Hon'ble NCLAT held that the approved Plan is not violative of Section 30 (2). Further, the CoC cannot have a change of heart and start clamoring before the Hon'ble Adjudicating Authority that they have no objection to sending back the Resolution Plan for reconsideration as it will lead to an unending process.

Link: t.ly/HY7v



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