

LANDMARK JUDGMENTS BY THE HON'BLE NCLAT 1st to 15th April, 2023



1. Pani Logistics Through its sole Proprieter, Kiran M. Jain Vs. Vikas G.Jain and others [D.O.J. 03.04.2023]

In the present case an Appeal has been filed by an Unsecured Financial Creditor raising objections to the Resolution Plan which was approved by the CoC with more than 99% vote share and asked for rejection of Resolution Plan on the basis that meagre amount has been paid to the Appellant and other Creditors, which is contrary to sec. 30 (2)(b) of IBC Code, 2016 as the Resolution Plan was approved by the CoC does not treat the Creditors equitably and fairly as required by the mandate of the code. The AA referred the judgement of “Essar Steel India Ltd. CoC vs. Satish Kumar Gupta” in which it was held that Commercial wisdom of CoC in approval of Resolution plan is given due regard and therefore approved the Resolution plan and rejected the application of Appellant. Aggrieved by the same, an Appeal was preferred before the Hon’ble NCLAT. The issue that arose for consideration was whether the creditors, receiving the meagre amount than other creditors can be a ground to question the resolution plan or not.

The Hon’ble NCLAT held that present is not a case where payment to the other Creditors is less than the liquidation value. The allocation in the plan to the Creditors can be questioned when the plan value earmarked for them is less than the Liquidation value. Mere allocation of meagre amount cannot be a ground to question the Resolution Plan.

Link- <https://bit.ly/3GV3mj9>

2. Intec Capital Ltd. Vs. Uday Kumar Bhaskar Bhat IRP of Atharva Auto Logistics Pvt. Ltd [D.O.J. 05.04.2023]

A loan was advanced to the Corporate Debtor by the Financial Creditor. The dispute with regard to the said loan went into arbitration and culminated into an award. The award was not challenged and had attained finality considering the fact that the period of limitation to challenge the award by either of the parties had expired. The FC filed an application u/s 7 of I&B Code 2016 which was admitted vide order dated 18.02.2022. The FC filed its claim, which was provisionally admitted by the IRP. Subsequently, after verification, the RP reduced the claim amount of the FC. Aggrieved by the reduction of the claim amount, an application was filed by the FC before the Adjudicating Authority. And later preferred an appeal before of the Hon’ble NCLAT.

The Hon'ble NCLAT upheld the order of the Adjudicating Authority and stated that Resolution Professional can reduce the claim amount once admitted. The Hon'ble NCLAT also emphasized on the on Regulation 14(2) of the CIRP Regulations, 2016, where the Resolution Professional has, in event additional materials comes, the power to change the claim amount.

Link - <https://bit.ly/3KSPrv4>

3. Clicbrics Technologies Pvt. Ltd. Vs. Ansal Housing Ltd- [D.O.J – 05.04.2023]

In the instant case, the Corporate Debtor was in the business of real estate. That an agreement was entered between the Corporate Debtor and Broker (Operational Creditor) whereby upon on sale of unit via OC, the OC was to receive payments/ Brokerage. However, the Corporate Debtor later on stopped making payments. Aggrieved by the same the OC/ Real estate agent issued Demand Notice under Section 8 of the Code. On non-receipt of any further payment from the CD post-service of the demand notice, an application u/s 9 was filed before the Hon'ble AA by the OC for initiation of CIRP. It was revealed during arguments that the CD has issued two cheques amounting to Rs. 12,72,741.74 which were not accepted by the OC. Therefore, the Hon'ble AA dismissed the said Petition by saying that the OC had approached the AA with a mala fide intention and not for genuine resolution as the payment towards the outstanding dues has been denied by the OC. Aggrieved by the same, an appeal was preferred before the Hon'ble NCLAT. The issue that arose consideration was whether brokerage commission payment of the Real Estate Agent is an Operational Debt?

The Hon'ble NCLAT relied on the principles of law settled in the judgment of **M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd.** where it has been clearly held that if the claim of an OC is undisputed and the operational debt remains unpaid, CIRP must commence for IBC does not countenance dishonesty or deliberate failure to repay the dues of an OC. Since the operational debt in the instant case is admitted & undisputed and has not been disputed prior to the issue of demand notice makes it a fit case for the admission of CIRP. Therefore, the impugned order of the AA has been set aside & the CD is ordered to release the payment.

Link - <https://bit.ly/3Lc7vBN>

4. M/s. State Bank of India Vs. M/s. Hackbridge Hewittic and Easun Ltd. [D.O.J 10.04.2023]

In the instant case, an Application under Section 7 of the Code was filed against the Corporate Guarantor. The Principal Borrower was already undergoing Liquidation and the Liquidation Value of the Principal Borrower was estimated to be around 27 Crore which was less than the claim filed by the creditor, the creditor thereby invoked Corporate Guarantee.

The Hon'ble AA dismissed the section 7 Petition only on the ground of limitation, while taking into consideration just the date of default and not the date of OTS proposal submitted. Aggrieved by the dismissal, the creditor preferred an appeal before the Hon'ble NCLAT. The issue that arose for consideration was whether acknowledgment of debt should be considered from the date of OTS proposal submitted or from the date of acceptance of OTS proposal or from the date of cancellation of the sanctioned OTS proposal?

The Hon'ble NCLAT, observed that a total of 13 OTS were exchanged between the Respondent and Appellant and as per section 18 of the Limitation Act, the initial date for the expiry of the period of limitation stands extended where a written and signed acknowledgement of liability has been issued by a party against whom a right or property is claimed i.e. a borrower or guarantor or security provider. The Hon'ble NCLAT also took note of Section 19 of the Limitation Act which states that a fresh period of limitation becomes available to the creditor when part-payment of debt is made by the debtor before the expiration of the period of limitation. Therefore it was held that the AA clearly erred in not considering that submission of the OTS which is clearly an acknowledgement of debt by the Principal Borrower and any fresh or subsequent modification of the OTS would further extend the limitation period by three years. Hence, it is therefore clear that the petition u/s 7 by the Appellant was not barred by the Limitation Act, 1963 and the impugned order is therefore wrong on this account itself.

Link- <https://bit.ly/3MWp5v0>

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