LANDMARK JUDGMENTS BY THE HON'BLE NCLAT

15th - 30th April 2023

1. Continuous Dyeing & Printing Mills Versus Bhavika Apparels Pvt. Ltd. D.O.J. 18th April, 2023

In the instant case a Petition u/s 9 of the Code was filed before the Hon'ble AA. The CD was receiving printed fabric goods from the OC for which invoices were raised by the OC. The CD on receipt of the printing fabrics used to check the goods and clear the bills for the invoices submitted. It was also submitted that Form 26A clearly evidences the acknowledgment of invoices by the CD. The OC also pointed that for six months after raising of invoices, no grounds were ever raised with regard to supply of defective and substandard goods and therefore the debit notes issued by the CD were not accepted. The Hon'ble AA held that since there was a dispute in existence, the Petition was set aside. The main issue of the case was whether in IBC section 9 proceedings there is a need to enter final adjudicating regarding existence of dispute between the parties regarding operational debt. Hence the present appeal.

The Hon'ble NCLAT upon going through the documents manifested existence of dispute prior to the date of Section 8 demand notice. Further, it was observed that it is well settled that in Section 9 proceeding, there is no need to enter into final adjudicating with regard to existence of dispute between the parties regarding operational debt and hence proceeding of Section 9 cannot be initiated at the instance of the OC. Appeal was dismissed.

Link- **https://bit.ly/41QDopt**

2. Bhushan Shringarpure Vs. Mr. B.K. Mishra RP of Lakeland Chemicals (India) Ltd. D.O.J. 20.04.2023

In the present case the RP did not issue the notice to the three OCs for the CoC meeting in terms of Section 24(3)(c) of the Code having the aggregate debt exceeding the 10% of total claim. Aggrieved by the same, the OC filed an Application before the Hon'ble AA, where it prayed that since there is non-compliance of Section 24(3)(c) and Section 24(4) of the Code, ,the Resolution Plan purported to have been approved by the CoC be rejected. The said Application was dismissed by the Hon'ble AA.

© 2023 AAA INSOLVENCY PROFESSIONALS LLP

Aggrieved by the same, the OC preferred an appeal before the Hon'ble NCLAT where the issue that arose consideration was whether it is mandatory on the part of the RP to issue notice to all the OCs in terms of Section 24(3)(c) of the Code if it is found by him that their admitted claim is more than 10% or not?

Hon'ble NCLAT held that it is incumbent upon the RP to issue the notice to all the OC of each meeting of the CoC or their representatives if the amount of the aggregated debt is more than 10% of the debt as mentioned under Section 24(3)(c). Hon'ble NCLAT found that no notice was issued by the RP to the OC, therefore, the RP is burdened with costs. It was submitted by the counsel of the OC that if the OC would have attended the CoC meetings they would

have been benefited by another 1 or 2% of the amount over and above the amount which has been allocated to them in the plan. Thus, the amount involved is too meagre to set aside the resolution plan which has been approved by the CoC by not less than 96.38% voting share. It is not a fit case for setting aside the resolution plan.
Link- https://bit.ly/3Vn19mL

3. Rajendra Pandurang Barde Vs. Amit Steels (D.O.J – 19 April, 2023)

In the instant case, the OC supplied certain goods to the CD; in default of payment, OC sent two notices to the CD demanding payment of the entire amount. Neither of the notices were replied thereof by the CD. Thereafter, a Petition u/s 9 of the Code was filed to initiate CIRP, which was admitted by the Hon'ble AA. Before admission of the aforesaid Petition u/s 9, the parties had entered into a settlement; nonetheless, the OC continued to process the application even after that, indicating that the OC was not satisfied with the settlement. Further, the entire payment in lieu of the aforesaid settlement was not made before the admission of the said Petition. Thereafter, the CoC was constituted on 02-12-2022 by the RP. Another settlement was entered between the parties after the constitution of CoC on 30-11-2022 with agreement dated 08-12-2022. Aggrieved by the order of Hon'ble AA, an appeal was preferred before the Hon'ble NCLAT by the suspended director of CD. **The main issue before the Hon'ble Appellant tribunal in appeal is that whether the settlement entered after constitution of CoC is valid or not.**

© 2023 AAA INSOLVENCY PROFESSIONALS LLP

The Hon'ble NCLAT relying upon the fact that CoC was constituted on 02.12.2022 by RP and the first meeting was also held on 10.12.2022, held that any settlement after passing of the impugned order and after constitution of CoC is only permissible when the same is approved with 90% vote share of CoC as Section 12A r/w CIRP Regulation 30A. Hence, the settlement dated 08.12.2022, which is relied by the Appellant in this Appeal can be of no ground to interfere with the impugned order dated 11.11.2022.
Link - **https://bit.ly/41S4sVk**

4. Bhotika Trade & Services Pvt. Ltd. Vs. Avinash EM Projects Pvt. Ltd.D.O.J 24.04.2023

The OC filed an application under Section 9 of I&B Code 2016 claiming the total amount of Rs.1,61,12,474.86 which included the interest amount. The Hon'ble AA rejected the application on the ground that the principle amount is less than 1 crore as there is no agreement filed by the operational creditor where parties have agreed to interest and hence the interest cannot be included in the claim. Therefore, it is less than the threshold prescribed under Section 4. Aggrieved by the same, the operational creditor preferred the present appeal.

The Hon'ble NCLAT considered the material on record presented by the Learned Counsel for the Appellant which indicated that the Corporate Debtor issued the debit balance which includes the interest, and hence, the application filed by the appellant could not have been rejected on the ground i.e., less than the threshold. Subsequently, reliance was placed on Prashant Agarwal vs. Vikash Parasrampuria which clearly states that the total amount for maintainability of the claim will include both the principal debt amount as well as interest on delayed payment. For those reasons, the Hon'ble NCLAT set aside the impugned order and revived the application before the Adjudicating Authority to be heard afresh in accordance with the law.
Link - **https://bit.ly/3AIPKEc**

AAA Insolvency Professionals LLP
AAAG & CO. LLP, Chartered Accountants
AAA Valuation Professionals LLP
AAA Capital Services Pvt. Ltd.
AAA Legal Professionals LLP

FOLLOW US



© 2023 AAA INSOLVENCY PROFESSIONALS LLP