Landmark Judgments by the Hon'ble NCLAT

1st to 15th May, 2023

MANAS SARKAR VS. INDIAN OVERSEAS BANK [CA (AT) (INS) NO. 1513 OF 2022] D.O.J-02.05.2023]

In the present case to initiate the proceedings under Section 9, the Standard Chartered Bank Singapore sent a demand notice to the Corporate Debtor in terms of section 8 of the Code, calling upon to pay the dues. However, no payment was made on behalf of the Respondent. Therefore an application was filed under Section 9 of the Code by the applicant on the basis of six invoices and the Assignment Deed. The Corporate Debtor filed a reply to the application, but no averment was made in the reply that the Assignment Deed was not duly stamped in terms of the Indian Stamp Act, 1899. The NCLT held that the assignment deed was admissible in evidence and admitted the application under Section 9 of the Code. Further an appeal was preferred by the Corporate Debtor. The main issue that arose in NCLAT is that whether a document, which is not duly stamped, deserves to be discarded in terms of Section 35 of the Indian Stamp Act, 1899, if it has been admitted during the proceedings by the other party who had the opportunity to challenge the admissibility of the said document. The Corporate Debtor eventually raised the issue of the inadmissibility of the Assignment Deed for the first time during the arguments on the application under Section 9 of the Code.

The Hon'ble NCLAT relied on the judgement of the Hon'ble Apex Court in Javer Chand And Others vs Pukhraj Surana and Shyamal Kumar Roy Vs. Sushil Kumar Agarwal, which held that once a document has been relied upon and not objected to, it cannot be rejected or ignored. Thus, the court holds that Section 36 of the Act applies, and Section 35 does not. Therefore, it was held that once an evidence not objected at the time of admittance cannot be objected at a later stage. Hence the appeal was dismissed.

Link: *https://bit.ly/3Ooj5vA*

NETAFIM AGRICULTURAL FINANCING AGENCY PVT. LTD. VS. BALIRAJA SAKHAR KARKHANA LTD. [D.O.J: 03/05/2023]

In the instant case, the Appellant filed an application under Section 7 of the Code, 2016 before the AA. However, the application was rejected on the grounds that the debt claim did not meet the threshold limit of Rs. 1 crore under Section 4 of the Code. It is important to note that the threshold limit for applications before the AA was increased from Rs. 1 lakh to Rs. 1 crore by the Central Government through S.O. 1205(E) dated 24.03.2020, in the exercise of its powers conferred by the proviso to Section 4 of the Code. The Appellant then filed an appeal before the NCLAT challenging the rejection of Section 7 Application. The Appellant's counsel contended that interest was also contemplated in the deed of guarantee and that the debt claim of Rs. 1.33 crore was inclusive of interest, which should be included in computing the total debt. The issue at hand was whether interest should be included in the computation of the total debt.

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After considering the submissions of learned counsel for both parties, the AA concluded that both the principal amount and interest should be computed to find out the threshold and that the amount of Rs. 1.33 crore was beyond the minimum threshold limit. Therefore, the error on the part of the AA was confirmed, and the impugned order was set aside. The matter was remitted to the AA to hear the Section 7 application afresh.

Link: *https://bit.ly/3o6s0r0*

KAPIL WADHAWAN VS. PIRAMAL CAPITAL & HOUSING FINANCE LTD. & ORS. D.O.J 15.05.2023

In the instant case the RBI in exercise of its powers under Section 45-IE of the Reserve Bank of India Act, 1934 superseded the Board of Directors of DHFL and appointed one Mr. R. Subramaniakumar as the Administrator of DHFL. On an Application filed by RBI against DHFL before AA under the provisions of Code, 2016, the AA admitted the petition and confirmed the appointment of Administrator of DHFL to perform all functions of the RP to conduct the CIRP of the CD. The RP as approved by the AA filed various IAs impugning certain transactions undertaken by the Corporate Debtor. Several IAs were filed by the RP praying avoidance of different transactions undertaken by the Corporate Debtor in the CIRP of the Corporate Debtor. Later Resolution Plan submitted by Piramal Capital & Housing Finance Ltd. was approved by the CoC. The AA approved the Resolution Plan submitted by Piramal. The Resolution Plan contained a Clause No.2.13, providing that Piramal will pursue avoidance applications preferred by the Administrator. In accordance with the aforesaid Clause, the Piramal – SRA filed different IAs to amend the memorandum of parties and substitute the RP with SRA to pursue transaction application. The Applications were allowed. Aggrieved by the same the Appellant (Kapil Wadhwa) preferred an appeal challenging order passed by the AA. The main question that arose before the Hon'ble NCLAT was that SRA can pursue the applications for avoidance transactions after the approval of Resolution Plan.

The Hon'ble NCLAT held that when Resolution Plan specifically empowers the Successful Resolution Applicant to pursue the avoidance applications, the said provisions of the Plan shall bind everyone including the erstwhile Administrator. NCLAT concluded that the impugned order has rightly permitted the Piramal –SRA to pursue the avoidance applications, which were filed by the erstwhile Administrator and were pending before the Adjudicating Authority.

Link: https://bit.ly/3MhOZam

NUFUTURE DIGITAL (INDIA) LTD. VS. AXIS TRUSTEE SERVICES LTD. D.O.J.- 09.05.2023

An application under section 7 was preferred by Axis Trustee Services Ltd. (Financial Creditor) against the Corporate Debtor to initiate the CIRP. That according to a debenture trust cum mortgage deed executed between the Financial Creditor and the Corporate Debtor, the Corporate Debtor sought some time from the Financial Creditor to make repayment of dues in 2020. Further, Financial Creditor granted 3 months to the Corporate Debtor to make the repayment of the dues. In October 2020, the Financial Creditor issued a notice to the Corporate Debtor for default on its part and sought full payment of all dues pertaining to the debentures. In 2022, the Financial Creditor issued a Legal Notice regarding the same. The Corporate Debtor challenged the Company Petition on the ground that it was barred by Section 10A of the Code, which provides for a moratorium on insolvency proceedings during the COVID-19 pandemic. The AA rejected the Appellant's plea seeking the dismissal of the Company Petition on the ground that it was barred by Section 10A of the Code. Subsequently an appeal was preferred by the Corporate Debtor before the Hon'ble NCLAT.

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The issue in question was whether an application filed under Section 7 of the IBC by a financial creditor is barred by Section 10A of the IBC, which prohibits the initiation of insolvency proceedings for defaults that occurred during the period from 25th March 2020 to 25th March 2021.

The Hon'ble NCLAT held that the application under Section 7 filed by the Financial Creditor was not hit by Section 10A as the defaulted amount included for the calculation in the Section 7 application did not pertain to the period covered by Section 10A. In conclusion, the NCLAT's decision confirmed that an application filed under Section 7 of the IBC by a financial creditor is not barred by Section 10A if the default occurred after the period covered by Section 10A.

Link: https://bit.ly/41Q8tZz



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