

Landmark Judgments by the Hon'ble NCLAT 16th to 31st May, 2023

1



M/s. Smartworks Coworking Spaces Pvt. Ltd. Vs. M/s. Turbot HQ India Pvt. Ltd.(NCLAT – DELHI) [D.O.J: 23.05.2023]

The appellant engaged in the business of coworking and flexi office space, had entered into a services agreement with the Corporate Debtor. The agreement specified a monthly office fee and a lock-in period of 36 months. The CD informed the appellant of their intention to terminate the agreement before the lock-in period ended. The appellant demanded payment for the unpaid operational debt, but the corporate debtor denied the claim. The appellant filed an application under Section 9 of the IBC, and the CD argued that the agreement was a lease agreement and rent was not an operational debt. The NCLT rejected the application, stating that the amount claimed for the lock-in period was not operational debt and that the agreement needed to be registered and stamped. Aggrieved by the same, an appeal was preferred. The issues that arose for consideration were;

- Whether the amount claimed by the appellant for the lock-in period constitutes operational debt?
- Whether the agreement is a compulsorily registerable instrument under the Registration Act 1908?
- Whether the agreement was originally engrossed on an unstamped paper?

As regards the first issue, as per the agreement, the OC was entitled to receive payment throughout the lock-in period, during which the CD was not allowed to terminate the agreement. The agreement stated that the agreement could be terminated with a 30-day notice after the lock-in period, which in this case was 36 months. However, the CD terminated the same much earlier, which was contrary to the agreement. This termination resulted in a clear breach of contract and gave rise to a claim in favor of the appellant. Further, Section 3(6) (b) of IBC, defines a claim as arising from a breach of contract, which falls within the meaning of the Insolvency and Bankruptcy Code (IBC). As regards the second issue, the Hon'ble NCLAT, upon examining the nature of the agreement, and interpreting Section 17(b) of Registration Act, held that the agreement does not fall under the purview of Section 17(b), and does not require compulsory registration for non-testamentary instruments that involve rights, titles, or interests in immovable property valued at Rs. 100 or more. As regards the third issue, The NCLAT held that the corporate debtor had replied to the claims made by the operational creditor and had taken possession of the premises and paid monthly fees, indicating that an agreement between the parties had been given effect to. The NCLAT states that even if the agreement was not properly stamped, it does not negate the fact that the corporate debtor had accepted and acted upon the agreement. The NCLAT emphasizes that the key consideration in determining whether the claim is an operational debt is whether it is due on the corporate debtor. The decision of NCLT was set aside and the appeal was allowed.

Link: t.ly/RkaME

Rupinder Singh Gill v. Three C Universal Developers Pvt. Ltd (NCLAT – DELHI)[D.O.J. 25.05.2023]

In the instant case, the Appellant agreed to purchase the entire shareholding of the Corporate Debtor and paid consideration after gaining the approval within a period of 11 months. In duration of these 11 months corporate debtor then filed a complaint under section 241 and section 242 of the companies act, 2013; in which the court ordered to maintain the status quo, and hence no transfer of shares was possible. However, in the meantime, the CIRP was initiated. Following this the RP was appointed, and the resolution plan was duly approved by the CoC. The applicant filed the application for intervention asking for a copy of the resolution Plan duly approved by the CoC. The Hon'ble NCLT dismissed the said application and held the applicant failed to submit any claim before the RP. Further, it was observed that mere pendency of a litigation between the applicant and suspended board of directors is not enough to intervene and direct the RP to serve a copy of resolution plan. Aggrieved by the same an appeal was preferred.

The issue that arose for consideration before the Hon'ble NCLAT was, whether copy of the Resolution Plan, which has been approved by the CoC but awaits the approval of the Adjudicating authority, can be given to the Appellant who is neither a Claimant, nor a Creditor or a participant? The Hon'ble NCLAT upheld impugned judgment and placed reliance on 'Association of aggrieved workmen of Jet Airways (India) Limited Vs. Jet Airways (India) Ltd (2022 SCC online NCLAT 36)' and Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. (Civil Appeal No. 8430 of 2018) wherein it was held that an approved Resolution Plan by the AA is not confidential anymore. Further, none of these judgements allow the RP to share a copy of the Resolution Plan awaiting approval to a person who is neither a claimant nor a creditor.

Link: t.ly/6ldF

Indiabulls Housing Finance Ltd. Vs. Revital Realty Pvt. Ltd. (NCLAT – DELHI)[D.O.J. 24.05.2023]

In the instant case, the appeal was raised against the order passed by the Adjudicating Authority (NCLT Delhi) dismissing the application of the appellant as being barred by limitation. The fact of the present case is that the appellant sanctioned a loan in 2016. The loan was disbursed on 09.05.2016. A clause in additional conditions, created a moratorium on repayment of principal amount, till July 2017. Later the Corporate Debtor defaulted payment in July 2018. Due to failure of CD to repay the amount, the Appellant recalled the entire loan facility via loan recall notice dated 25.03.2022. Despite this notice, the Debtor failed to repay the money within the timeline provided in the notice. Hence, 28.03.2022 was considered as the default date and subsequently a section 7 application was filed. NCLT while deciding held 09.05.2016, which was the date when the entire loan was disbursed, as the date of default and hence considered it barred by limitation.

The issue that arose for consideration before the Hon'ble NCLAT was whether the original application filed by the 'Appellant' under Section 7 of the Code before the 'Adjudicating Authority' was within limitation time frame in accordance with the Limitation Act, 1963. The NCLAT overturned the NCLT Delhi's judgement and remarked that the Adjudicating authority has wrongly presumed the date when entire loan was disbursed by the appellant as relevant date for counting limitation. The 'Financial Creditor' gets rights for filing an Application under Section 7 of the Code when the right to apply against default accrues and for every default there is a fresh period of limitation. Both the dates, 19.08.2018, the date on which payment was due and 28.03.2022, when the entire amount stood defaulted, both the dates fell well within the limitation period. Appellate Tribunal held the 'impugned order' as incorrect and it was set aside.

Link: t.ly/XRV

Rajesh Kumar Modi v. Punjab national bank and Ors. (NCLAT – DELHI)[D.O.J: 26.05.2023]

The present appeal was filed by the appellant i.e., Rajesh Kumar Modi, a shareholder of the corporate debtor against the order approving the CIRP of Corporate Debtor passed by NCLT Mumbai. Respondent 1, PNB(international) Ltd had provided two term loans to the corporate debtor, i.e., La Trendz Fabrica Private Limited. Two loan facility agreements were executed between the corporate debtor and financial creditor. The Agreement signed by them contains conditions that the agreement will be governed by English law and that the Court of England shall have jurisdiction in case a dispute arises.

The issue that arose for consideration before the Hon'ble NCLAT was whether NCLT, Mumbai has jurisdiction for considering section 7 application filed against La Trendz Fabrica Private Limited. The NCLAT was of the view that the Financial Creditor, can file a section 7 Application for approval in NCLT Mumbai. The reasoning provided for the same was that sub-section(1) of Section 60 of the IBC provides for the territorial Jurisdiction of the tribunal. The court also emphasized clause 35.1(c) of the agreement which stipulates that the lender shall not be prevented from taking proceedings relating to a dispute in any other Courts than the courts of England. Clause 17.7 of the second Loan Facility Agreement dated 27.09.2014 also makes it clear that it is for the exclusive benefit of the financing bank. These clauses are fabricated for the benefit of the lender bank. The facility agreement provides that the borrower has agreed to submit to the non-exclusive jurisdiction of the courts of England and to the fact that the lender bank is allowed to take proceedings in any such court of competent jurisdiction. Hence on these grounds, the appeal was dismissed.

Link: t.ly/_fac



AAA GROUP ENTITIES

AAA Insolvency Professionals LLP

AAAG & CO. LLP, Chartered Accountants

AAA Valuation Professionals LLP

AAA Capital Services Pvt. Ltd.

AAA Legal Professionals LLP

Find us on

