

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

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M/S. ACTIONCOR CONSULTANTS PVT. LTD. VS. M/S. VIPRAH TECHNOLOGIES LTD-COMPANY APPEAL (At)(Ins) 916/2019 (D.O.J. 01/06/2023)

In the instant case, an appeal was preferred against the order of Adjudicating Authority i.e. NCLT, Chennai. Vide the said order, the Adjudicating Authority has dismissed Sec.7 application. The question that arose for consideration before the Hon'ble NCLAT in this appeal was whether the amount lent by the Appellant to Directors of the CD by an Investment Agreement in their personal capacity, can be construed as 'Financial Debt' as defined under Section 5 (8) of the Code.

The Hon'ble NCLAT, had referred to its judgment in "Vyapar Mandir Palarivattom Pvt Ltv v. Alice PM TA No. 146 of 2021 (Company Appeal (AT) (CH) (Ins) No. 994/2020)" in which the Hon'ble NCLAT had held that amounts taken by Directors in their personal capacity, though used for the business purposes of the Company, will not fall within the ambit of the definition of 'Financial Debt' as defined under Section 5(8) of the Code. The Hon'ble NCLAT further stated that there should be a direct disbursement of the amount owed from the Financial Creditor to the Corporate Debtor for the amount to be construed as a 'Financial Debt.' as defined under Section 5(8) of the Code.

Link: <https://bit.ly/3PeJXPb>

MR. TORAL RATHOD V. MR. GOPALSAMY GANESH BABU CA (AT) (CH) (INS) 143 OF 2023 [D.O.J: 02.06.2023]

In the present case, a Public Announcement calling for submission of claims was made on 25.03.2022 with last date of filing claims 04.04.2022. The Appellant initially filed a claim on 02.08.2022 in an incorrect form i.e., Form B. On the receipt of the incorrect form, the Resolution Professional rejected the claim on ground of delay and advised them to re-submit their claim under Form-C. Subsequently, the Appellant filed a claim in Form C before the RP on 07.08.2022 (139th day of commencement of the CIRP), and filed an application on 29.11.2022 before the AA seeking condonation of delay of 49 days. The AA dismissed said application filed by Appellant. This order of rejection was appealed against.

The issue in question was whether the AA was justified in rejecting the Condonation of Delay of 49 days in filing the claim together with the delay in filing the Application?. The Hon'ble NCLAT, rejecting the appeal, held that the explanation given by the Appellant herein that delay was due to filing the claim in the wrong category is neither substantial nor can it be construed as a sufficient cause. The timelines given under IBC are to be strictly adhered to and any laches on behalf of the Appellant in filing the claim cannot be a substantial ground for condoning the delay.

Link: bit.ly/3NeKCih

Anheuser Busch Inbev India Ltd. Vs. Mr. Pradeep Kumar RP East Godavari Breweries Pvt. Ltd. [Comp. App (AT) (CH) (INS.) No. 12 / 2023] [D.O.J.- 12.06.2023]

In the instant case, an application was preferred by one of the financial creditors where its financial claim was kept in abeyance by the RP in lieu of the pendency of the arbitration proceedings wherein the corporate debtor had also filed its counterclaim. The Hon'ble NCLT held that the claim of the Applicant is collected and collated by the RP and is also considered and kept in abeyance and in view of the arbitration proceedings pending with regard to the counterclaim of the Corporate Debtor after which alone the claim amount of the Applicant can be decided with certainty. Aggrieved by the same, an appeal was preferred before the Hon'ble NCLAT.

The issue that arose consideration before the NCLAT was, whether the RP can keep a claim in abeyance on the basis that the Arbitration Proceedings are pending, wherein, the counterclaim of the Corporate Debtor is pending for determination? The Hon'ble NCLAT held that the RP can keep the claims in abeyance, because of the pending arbitration proceedings in regard to the counterclaim of the Corporate Debtor. That only after determination of the arbitration proceeding, the claim sum of the Appellant can be determined with certainty. The reliefs prayed for by the Appellant pertaining to admission of the claim cannot be acceded.

Link: t.ly/CF5O

PUISSANT TOWERS INDIA PVT. LTD. VS. NEUEON TOWERS LTD. COMPANY APPEAL (AT) (CH) (INS) NO. 181/2022~ [NCLAT CHENNAI] [D.O.J- 12.06.2023]

In the instant case, the Resolution Professional had preferred an Application for approval of Resolution Plan which was approved by 98.7% of the CoC. The Resolution Plan approved by the CoC consisted of 2 resolution applicants, wherein the main Resolution Applicant was M/s Longview Resources (HIK) Limited Hong Kong and the Co-Resolution Applicant was Invent Assets Securitization and Reconstruction Pvt. Ltd. which is an ARC. The AA rejected the Resolution Plan by stating that the same is a "Conditional Resolution Plan" as ARC would require prior approval of RBI u/s 10(2) of SARFAESI act in order to acquire shares of a corporate applicant as held in "UV Asset Reconstruction Company vs. Union of India" by Hon'ble Delhi High Court which wasn't taken by the ARC prior to becoming Co-Resolution Applicant in the Resolution Plan, thus remarked that Co-Resolution Applicant has although satisfied section 29A of IBC yet the requirement of prior permission of RBI makes the Resolution Plan "Conditional" and rejected the same. Aggrieved by the same, an appeal was preferred before the Hon'ble NCLAT.

The issue that arose consideration before the Appellate Authority stood as “Whether Prior approval of RBI is required by ARC for participating as a Co-Resolution Applicant under IBC?”. The counsel appearing for Appellant contended that ARC is a Co-Resolution Applicant only in the capacity of payment of assignable financial debt under the plan and shall not acquire any equity rights of the Corporate Debtor thus ARC is not barred from participating in the Resolution Plan as Co-Resolution Applicant. The Appellate Authority took in consideration the observations of The Hon’ble Delhi High Court in “UV Asset Reconstruction Company vs. Union of India” as well as the arguments put forth by the Appellant and held that since no equity rights are acquired by the ARC i.e. Co-Resolution Applicant, there shall be no requirement of prior permission by RBI for participating as a Co-Resolution Applicant in the Resolution Plan and reversed the decision of Adjudicating Authority hereby restricting further proceedings of liquidation of Corporate Debtor and ordered for implementation of Resolution Plan duly approved by the CoC.

Link: bit.ly/3p1PL40



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