

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



## **PRADEEP KUMAR KABRA RP OF M/S. CENGRES TILES LTD. VS. ASSISTANT COMMISSIONER CGST & CENTRAL EXCISE [NCLAT-NEW DELHI, D.O.J: 04.07.2023]**

In the instant case, the CIRP of the Corporate Debtor was initiated vide order dated 04.03.2021. That certain assets of the Corporate Debtor were attached by the Respondent prior to the commencement of CIRP for the purpose of recovering central excise due. The RP filed an application under Section 60(5)(c) of the code requesting the Hon'ble NCLT to pass appropriate direction to the Respondent for releasing the goods of the Corporate Debtor. The NCLT rejected the application observing that Adjudicating Authority has no jurisdiction to issue direction to the State Authorities about the action that are taken prior to the CIRP and directed the appellant to approach proper forum. Aggrieved by the said order, an appeal was preferred before the Hon'ble NCLAT.

The question which arose for consideration before the Hon'ble NCLAT was whether the RP was entitled for a direction from the Adjudicating Authority for release of the goods, which were under attachment of Respondent prior to the commencement of CIRP? The NCLAT observed that NCLT had erred in rejecting the Application filed by RP and that the application under section 60(5)(c) was maintainable and the NCLT had ample jurisdiction to issue necessary direction.

**Link:** <https://shorturl.at/bsBDU>

## **NAREN SETH LIQUIDATOR OF CIEMME JEWELS LTD. VS. SUNRISE INDUSTRIES [NCLAT-NEW DELHI, D.O.J: 04.07.2023]**

An application under Section 9 of the IBC was filed for initiation of CIRP against Ciemme Jewels Ltd ("Corporate Debtor"), which was admitted. Due to non-receipt of any Resolution Plan, the NCLT directed the corporate debtor to be liquidated and Mr. Naren Seth, the Appellant was appointed as the liquidator. Pursuant to the Liquidation Order, the Appellant conducted two separate auctions for the sale of the premises. Both the auctions were unsuccessful as no bid was received. A third notice was published after which the Appellant received a bid from Respondent No.3 and decided to proceed with it. The said e-auction was set aside by the NCLT and cost of fresh auction was imposed on the Appellant. An appeal was filed to set aside the order of NCLT and declare the sale as valid.

The question for consideration that came before NCLAT was whether the correct procedure was followed in the e-auction or not and whether the auction was conducted in haste without giving adequate opportunity to all?

The NCLAT upheld the NCLT's order and noted that the entire e-auction process was hurriedly conducted, concluding within just five days. The NCLAT relied upon the judgment of the Supreme Court in *M/s Jainsons Exports India vs Binatone Electronics Ltd.* It was further observed that although there are no specific timelines provided in the Liquidation Process Regulations, it is customary to allow a notice period of 30 days to obtain the best value. Therefore, the liquidator's hasty conduct in concluding the e-auction, disregarding this established legal position, was deemed inappropriate.

**Link:** <https://shorturl.at/bnHWY>

**MR. ASHOK KRIPLANI VS. MS. RAMANATHAN BHUVANESHWARI RP [NCLAT-CHENNAI, D.O.J: 04.07.2023]**

CIRP was initiated against the Corporate Debtor namely Dreamz Infra India Ltd. and the Appellant was appointed as Resolution Professional. NCLT directed to conduct the CIRP of the Corporate Debtor on a 'Project Wise Basis'. The Appellant submitted an application to the NCLT, requesting intervention and prioritizing the payment of unpaid CIRP costs to the Appellant for a prior matter in which the Appellant was appointed as the Resolution Professional. This prior matter related to another project of the Corporate Debtor. The Appellant's argument was based on the fact that the CIRP costs for the Project, in which the Appellant was appointed as the Resolution Professional, have not been settled. The application filed by the RP was dismissed by NCLT. An appeal was filed in NCLAT to challenge the impugned order.

The question of consideration that came before NCLAT was that whether IRP/RP can be paid for a project separate than that of which they were appointed as IRP/RP?

NCLAT, while affirming the impugned order passed by the NCLT, observed that the Appellant was appointed as IRP/RP in another project of Corporate Debtor and was subsequently removed. Therefore, in Project Wise Insolvency, Interim Resolution Professional/Resolution Professional cannot seek any unpaid Fees/Costs from the members of the Committee of Creditors of another project of the Corporate Debtor. The Appellate tribunal further held that the Appellant has no Locus Standi to make his claim.

**Link:** <https://shorturl.at/dtGHO>

**EPITOME COMPONENTS PVT. LTD. VS. DIVYESH DESAI, THE LIQUIDATOR OF TREND ELECTRONICS LTD. – [NCLAT NEW DELHI, D.O.J: 07.07.2023]**

CIRP was initiated against the corporate debtor, and the appellant expressed its interest in submitting a resolution plan. However, the plan of the appellant was not presented to the Committee of Creditors (CoC) for consideration due to the resolution applicant's ineligibility under section 29A of the IBC, according to the opinion of the Resolution Professional (RP). Only one resolution plan was put forth to the CoC, but it was deemed unfeasible and non-viable based on the commercial wisdom of the CoC. As a result, the liquidation of the corporate debtor was approved. The CoC's decision was then taken to the NCLT, which ordered the liquidation of the corporate debtor. Two appeals were filed in response to this order, arguing that the CoC did not take appropriate steps to revive the corporate debtor.

### The NCLAT considered the following issues:

- Whether the RP exceeded its authority by unilaterally rejecting the resolution plan based on the ineligibility of the resolution applicant under section 29A of the IBC?
- Whether the liquidation order issued by the Adjudicating Authority should be upheld or set aside?

**Regarding the first issue,** the NCLAT set aside the appeal and concluded that the RP did not exceed its authority under the IBC by rejecting the resolution plan and determining the appellant's ineligibility under section 29A. The RP's opinion on the eligibility of the resolution applicant was provided at the specific direction of the CoC. The NCLAT further noted that since the direction was given by the CoC, it can be inferred that the decision to not present the resolution plan was made based on the CoC's commercial judgment.

Regarding the second issue, the NCLAT upheld the Adjudicating Authority's decision to order the liquidation of the corporate debtor. The NCLAT stated that it is not the Adjudicating Authority's role to evaluate the rationale behind the CoC's commercial decision.

**Link:** <https://shorturl.at/fmFPT>



## AAA GROUP ENTITIES

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