

Landmark Judgments by the Hon'ble NCLAT 1ST - 15TH OCTOBER



STATE BANK OF INDIA VS. INDIA POWER CORPORATION LTD. COMPANY APPEAL (AT) (CH)(INS) NO.87/2023 (IA NOS.310 & 309/2023) WITH COMPANY APPEAL (AT)(CH) (INS) NO.69/2023 (IA NO.252/2023) – NCLAT CHENNAI- (DATE: 04.10.2023)

In the instant case, the Financial Creditor had filed a petition under Section 7 of the IBC with the prayer to initiate the CIRP against the Corporate Debtor. Thereafter, the Corporate Debtor filed an application seeking recusal of the Technical Member from the hearing of the said application however, the said application was dismissed by the Adjudicating Authority and directed the parties to complete the pleadings. During the course, the Corporate Debtor filed an application before Principal Bench, New Delhi for transfer/assignment of Section 7 Petition to NCLT, Kolkata from NCLT, Hyderabad wherein the Principal Bench ordered NCLT Hyderabad to defer the hearing till the final order is passed in the said application. In the meanwhile, the Corporate Debtor filed a money suit in which the court restricted lenders from initiating any proceedings on the basis of the deed of guarantee. The said order of the court was challenged before Hon'ble High Court, Kolkata. In the meanwhile, the order passed by the court in the money suit was set aside by the Hon'ble High Court. It is pertinent to note that thereafter the Corporate Debtor challenged the rejoinder filed by the Financial Creditor on being taken on record. Thus, the Financial Creditor filed an application for taking the rejoinder on record and condone the delay which was allowed by the Adjudicating Authority but at the same time an observation was made i.e., "any additional factual assertions that were not pleaded in the main petition, if found to have been introduced under the Rejoinder, the same will not be taken into consideration and will be eschewed." Aggrieved by the said order both the parties' filled appeals before the Hon'ble NCLAT. Thus, the issue before the Hon'ble NCLAT was whether the Adjudicating Authority was correct in allowing the rejoinder to be taken on record and whether the Adjudicating Authority was correct in directing the Financial Creditor that "any additional factual assertions that were not pleaded in the main petition, if found to have been introduced under the Rejoinder, the same will not be taken into consideration and will be eschewed."

The Appellant Authority held that the first issue i.e., the Adjudicating Authority was wrong in taking the rejoinder on record had already been dealt in detail by the Adjudicating Authority. The Appellate Authority further held that the further time granted to the Financial Creditor by the Adjudicating Authority vide order dated 03.12.2021 was not adjudicated on merits and the same cannot be considered as review as the basic ingredient for a review is adjudication by the AA on merits of the issue which has not been taken place in the present case. The Hon'ble NCLAT further held that when the Appellant/Petitioner sets up a case in the application filed either under Section 7, 9 or 10 of the Code then as per Rule 41 of the Rules, the Respondent shall specifically admit, deny or rebut the facts stated by the Applicant in his petition or application and state such additional facts as may be found necessary in his reply whereas it is provided in Rule 42 of the Rules that where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply pertaining to those additional facts but it cannot set up a new case altogether which has not been set up by the Applicant in the main application as it would again require a reply by the Respondent and further rejoinder by the Applicant and the process will go and shall never come to end. Therefore, both the appeals were dismissed by the Hon'ble NCLAT.

Link: <https://shorturl.at/vyGRU>

DIWAKAR SHARMA VS. ANAND SONBHADRA RP- COMPANY APPEAL (AT) (INSOLVENCY) NO. 1182 OF 2023 & I.A. NO. 4088 OF 2023- (D.O.J. 05.10.2023)

The Ex- Director also a shareholder (who had resigned prior to the commencement of CIRP) had preferred an Application before the Ld. AA after the Resolution Plan was approved by the Ld. AA to direct the RP to provide a copy of the Resolution Plan to ascertain the shareholding of CD in other companies. However, the Ld. AA had rejected the said Application observing that Applicant was not part of the Suspended Board of Directors. Aggrieved by the same an Appeal was preferred. The issue that arose for consideration before the Hon'ble NCLAT was whether a copy of the Resolution Plan approved by the Ld. AA could be provided to the Appellant who was the Ex-Director and Shareholder of the CD?

The Hon'ble NCLAT held that the Appellant was not part of the CIRP. He himself submitted that in 2014 he resigned as Director. In so far as his submission that he is shareholder of the Corporate Debtor, the Resolution Plan having been approved, what are the rights of different stakeholders is subject matter of the plan. Further, as regards the judgment upon which the Appellant had placed reliance on i.e., Association of Aggrieved Workmen of Jet Airways (India) Ltd. vs. Jet Airways (India) Ltd. & Ors. The Hon'ble NCLAT observed that the said case is with regards to the claim of the workmen who wanted a copy of the Resolution Plan after its approval. In the above case this Tribunal held that after approval of the plan they were entitled to access the Resolution Plan and Resolution Professional was directed to provide relevant portion of the Resolution Plan which was relevant for the workmen. The said judgment cannot come to the aid of the Appellant in the present case who was not stakeholder in the CIRP process. Further, the Resolution Plan was approved in 2022, at this stage, any direction on the prayers made by the Appellant in the application are uncalled for and unnecessary.

Link: <https://shorturl.at/hiGHV>

SANJAY PANDURANG KALATE VS. VISTRA ITCL (INDIA) LTD.- COMPANY APPEAL (AT) (INSOLVENCY) NO. 742 OF 2023 [ARISING OUT OF ORDER DATED 19.05.2023 PASSED BY NCLT, MUMBAI BENCH-V IN CP (IB) NO.283 OF 2023.] - [D.O.J. 05.10.2023]

In the instant case, the promoter had preferred an Appeal challenging the Order initiating CIRP of the Corporate Debtor. The promoter had contended that there were certain disputes arising out of MoUs and related specific performance. The Hon'ble NCLAT held that the scope and jurisdiction of Adjudicating Authority under IBC being summary in nature, it is distinctly not as extensive as that of a civil court to enquire into disputes arising out of MoUs and related specific performance.

The NCLAT further observed that under the Code once the debt becomes due and payable in law and in fact, and there is incidence of non-payment of the said debt in full or part thereof, CIRP may be triggered by the Financial Creditor as long as the amount in default is above the threshold limit. Further the Appellant/ Promoter had also admitted that they were endeavouring to settle the matter by getting in some investors resulting in admitting that the Appellant was financially incapacitated in repaying the outstanding debt on their own steam and were trying to mobilize resources to liquidate their debt. Further, to prove any transaction to be collusive and fraudulent in nature, the degree of proof and evidence required should be of unimpeachable nature and beyond reasonable doubt.

That the scope and jurisdiction of the Adjudicating Authority being summary in nature, it is distinctly not as extensive as that of a civil court to enquire into disputes arising out of MoUs and related specific performance. That there is no infirmity in the findings of the AA that the Financial Creditor having successfully proved the financial debt and default on the part of the Corporate Debtor, Section 7 application has been admitted. That the contention raised by the Appellant that there were serious internal disputes amongst the Respondents cannot be a cogent and reasonable ground for denying the Financial Creditor their right to claim payment towards the debt owed to them by the Corporate Debtor. In light of the aforesaid observations, the Appeal was dismissed.

Link: <https://shorturl.at/ruLQX>

RAIYAN HOTELS AND RESORTS PVT. LTD. VS. UNRIVALLED PROJECTS PVT. LTD- COMPANY APPEAL (AT) (INSOLVENCY) NO. 1071 OF 2023 & I.A. NO.3694 OF 2023 WITH COMPANY APPEAL (AT) (INSOLVENCY) NO. 588 OF 2023 & I.A. NO.1956 OF 2023 (D.O.J. 11.10.2023)

In the instant case, the Appeal was preferred after the expiry of the Limitation period of 45 days as prescribed under Section 61 of the Code, 2016. The Appellant had in its condonation Application contended that the Limitation period commences from the date when the order was communicated or the same came to the knowledge. The issue that arose for consideration before the Hon'ble NCLAT was Whether limitation for filing an Appeal under Section 61 of the IBC shall commence from the date of the order or from the date when contents of the order are known to the aggrieved party i.e., the date when copy of the order is received by an aggrieved party?

The Hon'ble NCLAT held that the Limitation for filing of the Appeal does not commence on the date when Appellant became aware of contents but it shall commence when order was pronounced. Reliance was placed on the judgment of the Hon'ble Supreme Court in V. Nagarajan vs. SKS Ispat and Power Limited and Ors wherein it was held that In Section 421(3) of the Companies Act, 2013, the Appeal was to be filed from the date when copy of the order of the Tribunal is made available to the person aggrieved which expression is omitted in Section 61 of the IBC. That the aggrieved party, expected to file an appeal has to be pro-active and has to apply for certified copy of the order and that the limitation commenced once the order was pronounced. Further, Section 12 of the Limitation Act provides for exclusion of the time taken in obtaining certified copy of an order. Accordingly, in view of the aforesaid findings, the Appeal was dismissed.

Link: <https://shorturl.at/rKV57>



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