

Amita Desai & Co. Company Secretaries, Mumbai

IBBI UPDATES

1. 05th May 2021, Business Standard

Demand from lenders for suspension of IBC grows amid second Covid wave

Indian lenders will not rush to send companies to the NCLT (National Company Law Tribunal) for debt resolution under the IBC (Insolvency and Bankruptcy Code), 2016 -- taking into account the second wave of Covid-19 pandemic.

Instead taking a cue from the industry, lenders are planning to ask the government to suspend the IBC process yet again so as to give an opportunity to companies to restructure their finances to cope up with pandemic, say lawyers.

2. 22nd May 2021 Summary of Judgment dated 21st May, 2021 of the Hon'ble Supreme Court of India in the matter of Lalit Kumar Jain Vs. Union of India & Ors. [Transferred Case (Civil) No. 245/2020 and other writ petitions]

Liability of a PG to CD in case resolution plan is approved

- a. Section 31 of IBC Code is clear that the Approved Plan is binding on the guarantor and he cannot avoid any attempt to escape liability under the provisions of section 1333 of the Contract Act, 1972 to discharge his or her liability on account of variance in terms of the Contract, without her or his consent.
- b. The release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.

Link of the same

<https://ibbi.gov.in/uploads/legalframework/982f0ad78155daecf90a1dcd70d0db3f.pdf>

3. 25th May 2021 Summary of judgment dated 15th March 2021 of the Hon'ble Supreme Court of India in the matter of Alok Kaushik Vs. Mrs Bhuvaneshwari Ramanathan and Others [Civil Appeal No 4065 of 2020]

Background

Hon'ble NCLT, Bengaluru bench vide its Order dated 21st March 2019 initiated the Corporate Insolvency Resolution Process ("CIRP") of Kavveri Telecom Infrastructure Limited ("CD"). Through the order dated 26th August 2019, Mrs. Bhuvaneshwari Ramanathan was appointed as Resolution Professional ("RP"). The RP appointed Mr. Alok Kaushik as Registered Valuer ("RV") on 16th September 2019 under Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency

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Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) for which a fee of Rs. 7.50 lakh plus applicable GST was ratified by the Committee of Creditors (“CoC”). The NCLAT vide Order dated 18th December 2019 set aside the CIRP against the CD and remanded the matter back to the NCLT to decide on the issue of CIRP costs. The RP accordingly cancelled the appointment of RV on 19th December 2019 and later on informed the RV that the fee ratified by the CoC could not be paid to him and instead paid a sum of Rs. 50,000/- only to the RV. The NCLT while disposing the remanded matter did not comment on fee payable to the RV.

Legal Battle

The RV filed an application under Section 60(5) of the Insolvency and Bankruptcy Code (“Code”), before the NCLT, praying for directions to be issued to the RP for payment of approved professional fee along with applicable GST, towards the valuation exercise. The NCLT observed that the NCLAT in its Order dated 18th December 2019 had directed that – “all actions taken by the ‘Interim Resolution Professional/Resolution Professional and ‘Committee of Creditors’, if any, are declared illegal and set-aside.” The NCLT stated that since the Hon’ble NCLAT has set aside the admission order and also the NCLT has already passed the Order with regard to the CIRP costs, it is functus officio and thereby dismissed the application vide Order dated 29 th June 2020. It advised the RV that in case he feels that the RP has failed to discharge her statutory duties as resolution professional, he may approach Insolvency and Bankruptcy Board of India (“IBBI”). Since the appeal preferred by the RV was dismissed by Hon’ble NCLAT, he approached the Hon’ble Supreme Court of India for relief.

Summary of Judgement of the Hon’ble Supreme Court

The Hon’ble Supreme Court, in exercise of its jurisdiction under Article 142 of the Constitution, ordered and directed that in a situation such as the present case, the AA is sufficiently empowered under Section 60(5)(c) of the Code, to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs. It is noted that, the AA shall assess whether any work has been done, as claimed, and if so, the nature of the work done by the valuer. The Hon’ble Supreme Court also held that the availability of a grievance redressal mechanism under the Code against an insolvency professional does not divest the NCLT of its jurisdiction under Section 60(5)(c) of the Code, to consider the amount payable to the RV (applicant). In any event, the purpose of such a grievance redressal mechanism is to penalize errant conduct of the RP and not to determine the claims of other professionals which form part of the CIRP costs. Accordingly, the proceeding was remitted back to the NCLT for determining the claim of the appellant for the payment of the professional charges as a registered valuer appointed by the RP in pursuance of the initiation of the CIRP.

Link of the same:

<https://ibbi.gov.in/uploads/legalframework/296bada3f297ab6e028459a5e95b3273.pdf>

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