

**Insolvency and Bankruptcy Board of India**  
**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

10<sup>th</sup> November, 2022

***Subject: Judgment<sup>[1]</sup> dated 4<sup>th</sup> November, 2022 of the Hon'ble National Company Law (NCLAT) in the matter of SLB Welfare Association Vs. M/s PSA IMPEX Pvt. Ltd. Vs. [Company Appeal (AT) (Insolvency) Nos.905 and 642 of 2022]***

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**Brief background:**

M/s PSA IMPEX Private Limited, Corporate Debtor (CD) launched a real estate project in the year 2012 to be completed within 36 months. Owing to delay in completion of project, home buyers approached the Real Estate Regulatory Authority (“**RERA**”) under Real Estate (Regulation and Development) Act, 2016 with complaints. During the inspection conducted by RERA only 10% of the work has been started and rest was abandoned. Thereafter, RERA has cancelled the registration of the Project by a due process. Subsequently, in response to public notice issued by RERA for completion of remaining project work, SLB Welfare Association (Appellant) submitted a proposal to complete Project.

In the meantime M/s. Rudra Buildwell Constructions Pvt. Ltd. claiming to be an Operational Creditor (OC) had filed an application under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) which was withdrawn by OC as case is hit by Section 10A of the Code. The Adjudicating Authority (AA) vide order dated 29.11.2021 dismissed the application as withdrawn. The OC again issued notice dated 06.12.2021 under section 8 of the Code to the CD demanding payment of an unpaid operational debt of Rs.5,39,60,674/- including interest. The date of default being 31.03.2020. The application filed by OC on 24.12.2021 under section 9 of the Code against CD. AA after seeking clarification on the issue of section 10A of the Code from OC, allowed the application on 18.04.2022 *ex-parte*, as CD did not appear. The Company Appeal (AT) (Insolvency) No.642 of 2020 was filed by the Appellant challenging the order dated 18.04.2022 and 25.07.2022 vide which Appellant was order to handover peaceful possession to IRP.

NCLAT while examining the fact in the appeal noted that appeals against orders of RERA were filed by the CD through its authorised signatory Mr.Raj Kumar, OC who had filed section 9 application. After dismissal of the RERA appeal second appeal was filed in the High Court by CD through Mr. Raj Kumar, wherein it was submitted that 99.75% shares in CD has been transferred to OC.

NCLAT has observed that object of filing of section 9 application by the OC, was not for resolution of insolvency of CD, but was an attempt to stop the implementation of RERA order and to take back the Project from the Appellant. The object for enactment of the IBC Code is to re-organisation and insolvency resolution of the CD. NCLAT, further observed that proforma invoices prepared bears the date of 31.03.2020 and contains the particulars of various materials supplied from 25.08.2019 to 19.01.2020 which do not contain GST details as required under the law and entries made in the books of accounts were not in normal course of business. This is evidenced from the fact that no work was undertaken at the project site during the relevant period.

**Date of default and acknowledgement are different events:** As regards, the issue of date of default mentioned as 31.03.2020, the affidavit submitted by OC before AA, stated that CD vide letter dated 03.06.2021 acknowledged the inability to repay and had acknowledged the debt; and accordingly, the date of default occurred on 03.06.2021. NCLAT observed that mere acknowledgement given by CD on 03.06.2021 accepting the debt, shall not change the date of default. The date of default and acknowledgement are two different events and date of default is not dependent on acknowledgement of debt. Hence, the application filed under Section 9 was also liable to be rejected being hit by Section 10A.

NCLAT while allowing the appeals held that initiation of CIRP by the OC was done fraudulently with the purpose other than insolvency resolution as such admission order vitiated in law. A sum of Rs.25,00,000/- was imposed as penalty on OC.

**Analysis:** The facts of the case clearly throw light on the collusion between OC and CD in the filing of appeals before RERA Appellate Authority, High Courts and AA by suppression of material facts. Outcome of NCLAT judgment in imposing huge penalty on OC for filing application to initiate CIRP of CD, for purposes other than resolution under the Code, is squarely in the interests of justice.

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