Insolvency and Bankruptcy Board of India

Subject: Status Note on evolving jurisprudence under the Insolvency and Bankruptcy Code, 2016 for the period from December 2023 to May 2024

A brief of selected judicial and quasi-judicial orders passed during December, 2023 to May, 2024 having significant bearing on the evolving jurisprudence under the Insolvency and Bankruptcy Code, 2016 (IBC/Code), is as under:

SUPREME COURT

1. In Re : Hari Babu Thota [Civil Appeal No.4422 of 2023]

Post initiation of CIRP, CD got registered as a MSME. Thereafter, the RP filed an application before the AA seeking approval of resolution plan submitted by promoters of CD, being duly approved by the CoC. The AA rejected the resolution plan holding that as MSME certificate was obtained post commencement of CIRP, the promoters of the CD were not entitled to avail benefit of section 240A of the Code. NCLAT while upholding the AA's order, held that cases where the MSME certificate is obtained after the commencement of the CIRP, cannot be permitted to tide over ineligibility to submit resolution plan by the promoters of CD. RP filed an appeal before SC challenging the order of NCLAT. SC while allowing the appeal, observed that even if the MSME registration was obtained during the CIRP, the promoter of such CD would be eligible to submit a resolution plan as RA in terms of section 240A of Code, if it had secured MSME certificate as on the date of submission of the resolution plan. Thus, the promoter of the CD was not disqualified from presenting the resolution plan. Also, the SC clarified that the NCLAT judgment in *Digamber Anand Rao Pingle Vs. Shrikant Madanlal Zawar & Ors.* [CA (AT) (Ins.) No. 43-43A of 2021] lays down the incorrect position of law.

2. Haldiram Incorporation Pvt. Ltd. Vs. Amrit Hatcheries Pvt. Ltd. & Ors. [Civil Appeal No. 1733 of 2022]

A financial creditor (FC) had issued a sale certificate to the auction purchaser after conclusion of auction under the provisions of the SARFAESI Act, 2002. Subsequently, the AA passed an order of admission against the CD on an application filed by an OC. During the CIRP, on an application of erstwhile director of the CD, AA held that the issuance of sale certificate and the handing over of the property was illegal and the auctioned property shall continue to be the asset of the CD. The appeal filed by the FC against the AAs order was dismissed by the NCLAT. Later, the auction purchaser filed an appeal before the SC. The SC while allowing the appeal observed that neither the erstwhile director, nor the FC has disputed the fact of conclusion of sale under the SARFAESI Act, 2002, nor any defect or default in forwarding the sale certificate in terms of section 89(4) of the Registration Act, 1908 was made. Accordingly, the purchased property cannot be treated to be part of liquidation assets of CD for the purpose of the liquidation proceedings under the Code.

3. DBS Bank Limited Singapore Vs. Ruchi Soya Industries Limited and Anr. [Civil Appeal No. 9133 of 2019]

A two-judge bench of the SC examined the issue as to whether the minimum value payable to a dissenting secured FC - DBS Bank in terms of section 30(2)(b)(ii) is required to be calculated on the basis of the voting share enjoyed by such creditor in the CoC of the concerned CD or on the basis of the value of the security interest enjoyed by such FC. In this matter, the SC took the latter view and held that the minimum value payable to a secured dissenting FC should be calculated by taking into account the value of the security interest enjoyed by such creditor. It observed that its view is in conformity with the judgments given in the matters of *CoC of Essar Steel India Ltd. v. Satish Kumar Gupta and Ors. (Civil Appeal No. 8766-67 of 2019 & other appeals)* and *Jaypee Kensington Boulevard Apartments Welfare Association & Others v. NBCC (India) Limited & Others (Civil Appeal No. 3395 of 2020)* which provide for the minimum entitlement of value of the security interest to a dissenting FC. However, on account of a differing view taken by another two-judge bench of the SC in the matter of *India Resurgence ARC* case (Civil Appeal No. 1700 of 2021), the Bench directed the matter to be placed before the Hon'ble Chief Justice for appropriate order for reference of the matter to a larger bench.

4. Bharti Airtel Limited & Anr. Vs. Vijaykumar V. Iyer & Ors. [Civil Appeal Nos. 3088-3089 of 2020]

The issue for consideration before SC was whether the right to claim set-off is available during the CIRP, when the RP has proceeded to take immediate custody and control of all assets in terms of section 25(2)(a) of the Code. SC made detailed analysis of the meaning, importance and types of set off and even highlighted the difference between set-off of transaction pertaining to period prior to CIRP, during CIRP and during liquidation. It held that the provisions of statutory set-off in terms of Order VIII, Rule 6 of the Code of Civil Procedure, 1908 or insolvency set-off as permitted in regulation 29 of the Liquidation Regulations, cannot be applied to a CIRP. This rule, however, is subject to two exceptions i.e. (i) where a party is entitled to a '*contractual set-off*' (where parties agree for set-off in a particular manner beforehand), on the date which is effective before or on the date the CIRP is put into motion or commences, and (ii) in the case of 'equitable set-off' when the claim and counter claim in the form of set-off are linked and connected on account of one or more transactions that can be treated as one. The SC, keeping in view the provision of *doctrine of pari-passu* (same class of creditors should be given equal treatment) and *anti-deprivation* (common law rule that prevents creditors from being disadvantaged by contractual provisions that undermine insolvency laws), did not allow statutory set-off and insolvency set-off. It also observed that unlike the provisions of the Companies Act, 1956 or the Companies Act, 2013, the Code (in the case of CIRP) does not give the indebted creditors the right to set-off against the CD. Though, (i) in the case of partnerships and individual bankruptcies, section 173 of the Code permits set-off, and (ii) section 36(4) of the Code permits the Insolvency and Bankruptcy Board of India (IBBI) to specify assets which could be subject to set-off during liquidation process on account of mutual dealings between the CD and the creditor and (iii) regulation 29 of the Liquidation Regulations provides for mutual credits and set-off, however, same are not applicable to Chapter II of Part II of the Code, which relates to the CIRP.

5. **Ansal Crown Heights Flat Buyers Association (Regd.) Vs. Ansal Crown Infrabuild Pvt. Ltd. & Ors. [Civil Appeal Nos. 4480-4481 of 2023]**

CIRP was initiated against the CD carrying on the activity of construction of homes. During CIRP, the Homebuyers' Association of CD filed an execution application before National Consumer Disputes Redressal Commission (NCDRC) seeking execution of its previous order against the CD and suspended directors / officers of CD. The NCDRC declined to execute its order due to the operation of moratorium under section 14 of the Code. On an appeal filed by Homebuyers' Association, SC observed that it cannot be said that no proceedings can be initiated against the directors/ promoters of the CD because there is a moratorium in place under section 14 of the Code. Relying on the judgment in *P.Mohanraj Vs. Shah Bros. Ispat (P) Ltd. (Civil Appeal No. 10355 of 2018),* SC held that liability, if any of the directors/ officers of CD will continue and protection of moratorium in terms of section 14 of the Code is only available to the CD and shall not be applicable to the directors.

6. **Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr. [Civil Appeal Nos.7590-7591 of 2023]**

Greater Noida Industrial Development Authority (GNIDA) provided a plot of land to the JNC Construction (P) Ltd (CD) on lease, for constructing residential flats. It submitted its claim of ₹43,40,31,951/- as FC towards unpaid instalments payable towards premium for the lease. The RP treated the GNIDA as an OC and, *vide* e-mail dated February 4, 2020, requested the GNIDA to submit its claim in Form B, as an OC of the CD. GNIDA did not submit its claim afresh as an OC. In the meantime, the resolution plan was approved. The dues shown payable to the GNIDA were ₹13,47,40,819/- as an OC, and they were proposed to be paid just ₹1,34,74,082/- under the plan. GNIDA approached the AA for recalling of its order of approval of resolution plan. AA while dismissing the application held that GNIDA did not take any action against the decision of the RP inspite of the knowledge about the ongoing CIRP. GNIDA preferred an appeal contesting its right as FC, before NCLAT which was dismissed. Subsequently, GNIDA filed an appeal before SC. SC, while allowing the appeal of GNIDA, set aside the resolution plan and sent the same to CoC for resubmission. It observed that the resolution plan fails not only in acknowledging the claim made, but also failed in mentioning the correct amount due and payable. Also, the resolution plan did not specifically place GNIDA in the category of a secured creditor. It observed that once it is proved that GNIDA has submitted its claim with proof then it could not have been overlooked merely because it was in a different Form. It observed that *'...The use of the words "a person claiming to be an operational creditor" in the opening part of Regulation 7, and the words "a person claiming to be a financial creditor" in Regulation 8, indicate that the category in which the claim is submitted is based on the own understanding of the claimant. Thus, there could be a situation where the claimant, in good faith, may place itself in a category to which it does not belong.'* Generally, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the CoC. However, where the plan envisages use of land not owned by the CD but by a third party, such as GNIDA, which is a statutory body, there must be a closer examination of the plan's feasibility. SC further pointed out that neither NCLT nor NCLAT while deciding the application /appeal took note of the fact that GNIDA had not been served notice of the meeting

of the CoC. The entire proceedings up to the stage of approval of the resolution plan were *ex parte* to GNIDA which had submitted its claim, and was a secured creditor by operation of law, yet the resolution plan projected GNIDA as the one who did not submit its claim. SC held that resolution plan did not meet all the parameters laid down in sub-section (2) of section 30 read with regulations 37 and 38 of the CIRP Regulations, and the same was sent back to the CoC for re-submission.

HIGH COURT

7. Subrata Monindranath Maity Vs. The State represented by Deputy Director, Industrial Safety Health-11 [Crl.O.P. No. 23906 of 2023]

After CD was admitted into CIRP, RP became the occupier of CD's factory as per the Factories Act, 1948. Seven criminal petitions were filed under section 482 of the Code of Criminal Procedure, 1973 for quashing criminal proceedings initiated under section 92 of the Factories Act, 1948 against the occupier i.e. RP, for not following the safety measures in the factory while CD was running as a going concern. After inspection, a show cause notice (SCN) was issued to the RP. Aggrieved by the criminal prosecution initiated, petition was filed before the HC. The issues before the HC were firstly, whether the RP is the 'occupier' of the factory under the Factories Act, 1948, and secondly, whether the RP is protected from criminal prosecution under section 233 of the Code? HC held that the RP, on appointment, takes control of the property and business of the CD and therefore for all purposes, the RP will be the 'occupier' of the factory. On the second issue, the HC held that protection under section 233 of the Code can be provided to the RP only in respect of the '*act done or intended to be done in good faith*'. Referring to the facts of the case, the HC held that '*failure or omission to provide safety measures in the factory cannot be stretched to inaction*'. It also observed that RP will be responsible for the criminal proceedings as occupier. While disposing of the original petition, it observed that the proceedings before the Trial Court will not be covered under section 14 or 233 of the Code.

8. Dr. Arun Mohan Vs. Central Bureau of Investigation [W.P.(CRL) 544/2020 & CRL.M.A. 4088/2020]

An FIR was registered by Central Bureau of Investigation (CBI) against RP under section 7 and 7A of the Prevention of Corruption Act, 1988 (PC Act) read with section 120B of the Indian Penal Code, 1860. Later on, the judicial remand for two weeks was ordered considering the RP as '*public servant*' under section 2(c) of the PC Act. Aggrieved by the same, the RP filed a writ petition for quashing of FIR before the HC. The question before the HC was whether the RP is a '*public servant*' under the PC Act. The HC, while quashing the FIR, held that RP does not fall within the meaning of '*public servant*' as ascribed in any of the clauses of section 2(c) of the PC Act. It further observed that because the IP is vested with certain roles, responsibilities and duties which could partake the nature of '*public duties*', it is not a necessary conclusion or a definite inference that the same are being discharged in the nature of '*public character*'. The IP undergoes transition from an IRP to an RP and thereafter becomes Liquidator. It was held that it would not be prudent to characterize the duties although it appears to be in the nature of '*public character*'.

9. V. Venkata Siva Kumar Vs. Insolvency and Bankruptcy Board of India & Ors. [W.P No. 21186 of 2023 and WMP.N0.20596 of 2023]

CIRP against CD failed, and liquidation proceedings against the CD commenced *vide* order of the AA. An IA was preferred by one of the FCs seeking replacement of liquidator on the ground that the liquidator acted against the interest of CD by sharing the valuation report with the prospectives scheme proponents. Accordingly, AA issued directions for removing liquidator of CD. Consequently, IBBI issued an SCN against the liquidator. Aggrieved by the order of AA and subsequent action of the IBBI, the liquidator filed a writ petition challenging the action of IBBI, stating it to be arbitrary, illegal and violative of Article 14, 19, 20(2) and 21 of the Constitution. The HC elaborated the scheme of the Code in detail and observed that a liquidator so appointed by the AA is governed by the Liquidation Regulations. It observed that regulation 34(5) of the Liquidation Regulations requires the liquidator to prepare an asset memorandum which includes valuing the asset of the CD, and enables sharing of the information only with the IBBI and the SCC, but it nowhere authorises the liquidator to share the asset memorandum with the potential purchasers of the corporate assets of the CD. HC while dismissing the writ petition observed that '*…the IBC and the Regulations made thereunder are anxious to protect the information leak on the valuation of the corporate assets both by the Resolution Professional or by the liquidator'*. Lastly, it clarified that IBBI has the jurisdiction to initiate disciplinary proceedings, and thus, there was no *malafide* exercise of statutory power.

10. CA V. Venkata Sivakumar Vs. Insolvency and Bankruptcy Board of India & Ors. [Writ Petition Nos. 16650 of 2020 and 14448 of 2021 & W.M.P.No.24548 of 2020]

The issue that arose for consideration was firstly, whether clause 23A of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (Model Bye-Laws Regulations is liable to be struck down as being manifestly arbitrary, conferring unbridled, excessive power on Insolvency Professional Agencies (IPAs) and for violation of principles of natural justice? Secondly, whether section 204 of the Code is violative of Article 20(2) of the Constitution, in as much as it provides for disciplinary proceedings by two agencies namely, IPA and the IBBI? HC while disposing these WPs, upheld the validity of clause 23A of the Model Bye-Laws Regulations and held that IPAs do not exercise discretion as the suspension happens automatically once the disciplinary proceedings are initiated. The power of suspension is not a punishment but is an *ad-interim* measure and the purpose of suspension is to immediately keep the erring RP away from the office, so that relevant material and evidences on record can properly be collected for an impartial and fair enquiry. HC further clarified that petitioner had previously also filed WP challenging the other provisions of the same regulations and filing of the repeated WP would be barred by the principles of constructive *res judicata*. HC, while referring to the Bankruptcy Law Reforms Committee Report, held that section 204 has been incorporated after due deliberation and RPs have been subjected to a two-tier monitoring and control system with proper application of mind.

11. Deputy Commissioner (Works Contract), Kerala State Goods and Services Tax Department Vs. NCLT & Ors. [WP(C) NO. 39185 of 2022]

Post liquidation order, Kerala State Goods and Services Tax Department issued an assessment order. An application seeking permission to file appeal against such assessment order was filed before AA by CD. AA while dealing with such application, declared the assessment order as *void ab initio*, on the grounds of violation of the moratorium under section 14(1)(a) of Code. Against this, a writ petition was filed against AA before Kerala HC. While setting aside the order of AA, HC held that while the moratorium prohibits enforcement of claims, it does not prevent assessment or determination of tax liabilities.

12. Kunwer Sachdev Vs. IDBI Bank & Ors. [W.P.(C) 10599/2021 and CM Appls. 32697/2021 & Ors.]

Ex- director of CD/ Petitioner herein filed a WP before Delhi HC seeking directions to IBBI, Reserve Bank of India (RBI) and Indian Banks' Association (IBA) to develop guidelines for effective monitoring and functioning of the CoC. HC observed '*Considering the significant role which the CoC plays in the entire CIRP and the sanctity of the 'commercial wisdom' of the CoC which is protected by the legislative mandate from unnecessary interference, there is a compelling need for the code of conduct/ guidelines for the effective working of the CoC in order to fulfil the bonafide objectives of the Code'*.

13. Nirmal Singh & Ors. Vs. State of U.P. & Ors. [WRIT – C. No. - 41110 of 2019 & Ors.]

NOIDA allotted land to M/s Hacienda Projects Private Limited (HPPL) to build and develop a residential project '*Lotus 300*' in Noida and executed a lease deed with HPPL. The promoters of HPPL had syphoned away ₹ 190 crore approx. out of ₹636 crore collected towards sale/booking of flats from the homebuyers. Instead of developing the project, the said sums were diverted from the CD and interest-free loans were given to other companies of the promoters. Homebuyers of the project lodged an FIR against the promoters of the CD. After negotiations, a memorandum of understanding was entered between homebuyers' association and promoters on behalf of the CD for completion of the project. As the promoters failed to pay the amount, NOIDA sent a recovery notice of ₹63.65 crore. Aggrieved by the said notice, promoters filed a writ petition before Allahabad HC with the prayer to quash the recovery notice. In the meantime, CIRP was also initiated against CD on FC's application. The issue before HC was whether the Code would provide any protection to the promoters/directors in terms of moratorium under section 14 of the Code, against the criminal liability for the prosecution of fraud? HC noted that the promoters have played a fraud on the homebuyers, NOIDA, FC as well as on the Court. It held that moratorium under the Code is confined only to the CD and the directors/ promoters shall continue to be liable and be prosecuted for such offence.

14. Shiv Charan & Ors. Vs. AA under the PMLA & Anr. and connected petitions [WP (L) No.9943 & 29111 of 2023]

In cross-writ petitions namely- (1) the successful resolution applicant (SRA) preferred a WP before HC seeking directions to Directorate of Enforcement (ED) to release the attached properties in view of approved resolution plan; (2) on the other hand, the ED also preferred WP *inter alia* praying to quash AA's order of approving the plan and direction for release of CD's assets. The issues before HC were (a) can an attachment by Directorate of Enforcement (ED) continue over CD's assets post approval of resolution plan under the scheme of IBC; and (b) whether the NCLT has the jurisdiction to direct the ED to release attached properties under section 32A? HC noted that proviso to section 31(1) of the Code requires the NCLT, while approving a resolution plan, to ensure that the resolution plan is capable of being effectively implemented. After approval of resolution plan, section 32A provides immunity to the CD from the liabilities/ offences committed by it prior to the commencement of CIRP. It observed that for availing such immunity, there must be a change in the ownership and control of the CD, and the immunity under section 32A will not be available to the promoters/ KMP or related persons. HC upheld the AA's directions to release the CD's attached assets and observed that once a resolution plan is approved and CD qualifies for immunity under section 32A, then it is

incumbent upon quasi-judicial authorities such as the AA under the PMLA to take judicial notice of the same and release the properties attached on their own. It also held that section 32A of the Code having a non-obstante provision will prevail over the PMLA which is a subsequent legislation. Lastly, it held that AA is empowered in its jurisdiction under section 60(5) to decide any fact or law arising in or relating to insolvency proceedings.

15. DAE (SY 22) 13 Ireland Designated Activity Company Vs. Go Airlines (India) Ltd. [Cont. Case(C) 1767/2023]

A contempt petition was filed under section 12 of the Contempt of Courts Act, 1971 by one of the lessors of CD against RP for non-compliance of the Delhi HC order dated October 12, 2023, *inter alia* alleging non-compliance of directions passed in an earlier order regarding regular maintenance; monthly inspection of the Aircrafts and providing of aircrafts records and documents. RP submitted that steps were taken for compliance of the order but there were difficulties underlying in it. HC while issuing contempt notice to RP observed that he failed to comply with the earlier orders and cannot plead difficulties at a later point in time when contempt proceedings have already been filed.

16. Talib Hassan Darvesh Vs. The Directorate of Enforcement [W.P.(CRL.) 780 of 2024, CRL.M.A.7287 of 2024]

CIRP against CD was initiated by order of AA. As per the findings of forensic audit conducted during CIRP, a complaint was filed against CD and others by the Bank. In pursuance of which PMLA proceedings were initiated against them. Meanwhile, in an IA, order dated February 9, 2021 was passed by AA declaring such audit report as unreliable. Based on same, aforesaid writ was filed seeking stay against investigation by ED. Delhi HC along with other provisions of PMLA, relied on the second proviso to section 32A of the Code dealing with the liability for prior offences, and observed that '*merely in view of order dated 26.10.2018 passed by NCLT, Ahmedabad bench in insolvency proceedings and reference of the same in order dated 08.12.2022 passed by learned Court of Session, Greater Bombay in Anticipatory Bail Application No. 2546 of 2022 preferred by petitioner, cannot lead to a conclusion at this stage, that petitioner is not associated with proceeds of crime. Neither the same takes away the jurisdiction to investigate the proceedings under PMLA, 2002'.* In the result, HC dismissed the WP.

17. Gouri Prasad Goenka Vs. State Bank of India & Ors. [WPO No. 1487 of 2023]

CD entered into a One-time settlement (OTS) with the Bank towards payment of certain dues. However, the time for such repayment under OTS was getting extended. In the meanwhile, CIRP was admitted against the CD. Further, CD was declared as 'wilful defaulter' by the Reviewing Committee in terms of RBI Master Circular. Aggrieved by the order of Reviewing Committee, CD filed a writ before the Calcutta HC. Issues raised before HC was that (i) the CD was under moratorium, and (ii) the Review Committee has not taken into consideration of circumstances such as losses faced by it. HC relied on the judgment of *B.C. Chaturvedi v. Union of India and others,* reported at (1995) 6 SCC 749 and *State of T.N. and another v. S. Subramaniam,* reported at (1996) 7 SCC 509 and held that the HC would interfere in judicial review only if the impugned conclusion could not have been reached by a reasonable person. While dismissing the writ petition, it observed that the moratorium under the Code was introduced to sustain the business of the company in the hands of the SRA, and notwithstanding the commencement of CIRP, the directors cannot be absolved of any wilful default committed by the CD at the relevant juncture.

18. Atibir Industries Company Ltd. & Ors. Vs. Indian Bank [WPO No. 204 of 2024]

CD and its directors/guarantors had filed WP before HC praying to set aside the SCN issued by Indian Bank declaring the petitioners as 'wilful defaulters' in terms of the Master Circular issued by RBI. HC held that a borrower is declared to be a wilful defaulter upon satisfying the criteria meant for declaring wilful defaulter in the RBI Master Circular. HC held that a wilful defaulter proceeding does not come within the contemplation of section 14 or section 96 of the Code, which primarily pertains to legal actions to foreclose, recover, or enforce security interest, or recovery of any property of the debt-in-question. It referred to observations of SC in *P.Mohanraj Vs. Shah Bros. Ispat (P) Ltd. (Civil Appeal No. 10355 of 2018)* wherein, it was clarified '*that the moratorium concerns not merely recovery of debt but any legal proceeding even indirectly relatable to recovery of any debt. Hence, the moratorium applies to recovery proceedings and proceedings which directly or indirectly "relatable" to such recovery. A wilful defaulter proceeding cannot, by any stretch of imagination, be said to be even remotely relatable to recovery of debt but is merely an off-shoot of the debt. The corpus of debt is not the subject-matter of a wilful defaulter proceeding, unlike a recovery proceeding, but is a mere stimulus to spur the wilful defaulter proceeding into motion'.* While disposing the petition, HC held that the SCN is valid, and cannot be set aside.

19. Amit Gupta Vs. Insolvency and Bankruptcy Board of India and Anr. [WP (Lodging) No. 34701 of 2023]

Bombay HC disposed of WP filed by IP *inter alia* challenging the IBBI Circular dated 28.09.2023 wherein the Board issued clarification with regard to regulation 4(2)(b) of the Liquidation Regulations. The challenge was primarily on the ground that in the garb of clarifying certain terms contained in regulation 4(2)(b) of Liquidation Regulations, IBBI has effectively amended the said regulations by stipulating new substantial requirements with retrospective effect. HC upheld the clarifications issued by Board *vide* the above Circular except para 2.1 and para 2.5 which were held to be a substantive amendment to the Liquidation Regulations.

20. Rajan Garg (RP), Truly Creative Developers Pvt Ltd. Vs. CEO, Slum Rehabilitation Authority (SRA)& Ors. [Writ Petition No. 1398 of 2024]

RP filed a WP challenging the validity of the acquisition proceedings initiated by the Slum Rehabilitation Authority (SRA) under Maharashtra Slum Act against CD's land for violating the moratorium under the Code. The issue before the HC was whether the provisions of the IBC to protect the CD's assets, can ever prevail over a welfare statute and the concerns of individual citizens under the above Act? HC while dismissing the WP observed that the provisions of the Code are not meant to defeat slum redevelopment and similar or allied statutes. It held that "Operation of a statute" could not be stayed by section 14 of the Code.

21. Sundaresh Bhat Vs. Insolvency and Bankruptcy Board of India [W.P.(C) 14389/2022]

On a writ petition filed by RP against the order passed by the Disciplinary Committee (DC) o IBBI, the Delhi HC upheld the findings of DC and the suspension of registration of RP for two years. HC noted that the RP's action of appointment of professionals from the entity in which he is a partner and charging excess fees, was an attempt to increase his own earnings, which violated the integrity and purpose of the liquidation process. On the importance of ethical conduct for liquidators, the HC observed that "…..*liquidator enjoys a significant degree of autonomy, they are bound to wield their power responsibly and ethically within the confines of*

the IBC framework. Upholding ethical principles and demonstrating unwavering commitment to fairness are paramount for an official liquidator to effectively discharge their duties under the IBC. At the same time, it is imperative that a liquidator is given the autonomy that is required to take decisions that may help in actualizing the real value of the assets or materials that are being liquidated."

22. Farooq Ali Khan Vs. Bank of Baroda & Anr. [WP. No.6288 of 2024 (GM - RES)]-

The promoter of CD filed WP seeking to prohibit the NCLT from entertaining proceedings against him under section 95 of the Code on the ground that the personal guarantee executed by him ceased to exist as he was no more an obligant. HC after examining the loan document and review of facility document, noted that the petitioner's personal guarantee stood waived. HC clarified that the proceedings against an individual before the Tribunal would become maintainable, only if he has stood as personal guarantor to any loan of any company. While allowing the writ petition, HC directed NCLT not to continue proceedings against the petitioner as he was no longer a personal guarantor.

23. Accipiter Investments Aircraft 2 Ltd. (Lessors) Vs. Union of India & Anr. [W.P.(C) 6569/2023 & CM APPL. 36850/2023 and Other writ petitions]

The lessors filed various writ petitions challenging the rejection of deregistration applications of lessors by DGCA. While setting aside the letters of DGCA declining de-registration, the HC observed that (i) the lease agreements were terminated before the imposition of moratorium under the Code, (ii) rule 30(7) of Aircraft Rules provides for mandatory cancellation of registration within 5 days of request for de-registration, (iii) the question of de-registration pertains to subject-matter of Aircraft Act / Rules, and the NCLT's jurisdiction is limited to extent provided in IBC, (iv) where the dispute does not arise solely from or relate to insolvency, the legitimate jurisdictions of Courts and Tribunals cannot be usurped by NCLT/NCLAT, (v) the HC has jurisdiction as this case pertain to the applications for deregistration and export (in some cases) of the Aircraft, as CD has defaulted in fulfilling its obligations under lease agreements by non-payment of lease rentals, and the termination has not solely arisen out of insolvency, (v) the MCA notification dated 03.10.2023 has been issued to cure a lacuna in the existing law which will benefit the community, and the legislative intent of the MCA Notification can be seen from references to the Cape Town Convention and Cape Town Protocol, the date of accession by India and the timing of issue of notification, (vi) the words "*aircraft, aircraft engines, airframes*" ought to have been included in sub-section (3) of section 14 of the Code from the date the sub-section came into force, so as to ensure implementation of procedure set forth therein for remedies on insolvency in relation to Aircraft (vii) the MCA Notification was although delayed, but was a necessary adjunct to the Declaration of Accession of the Cape Town Protocol and is thus retrospective in its operation, (viii) a combined reading of Article XI-Alternative A of the Cape Town Protocol along with rule 30(7) of the Aircraft Rules reflects that aircraft, aircraft objects, airframes and aircraft engines are be kept out of the purview of other legislations, and the provisions in relation to insolvency as set forth in Article XI-Alternative A be applied in its entirety, (ix) the explanation (a) to section 18 of Code excludes assets owned by third party in possession of CD held under trust or contractual arrangement, and the Aircrafts in question ceased to be property of CD upon termination on various dates prior to ICD, (x) in view of the delay in deregistration of the Aircrafts, India's compliance rating of the Cape Town Convention and Cape Town Protocol has fallen from 3.5 to 2 out of 5, which is a significant drop and these compliance ratings have a long term impact

on the Aircraft industry in India and also to Airlines operating in India, including a significant increase in lease rental payments charged by the Petitioners/Lessors.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

24. Jindal Power Limited Vs. Dhiren Shantilal Shah & Ors. [CA(AT)(Ins.) No. 1166- 1167 of 2023]

The issue for consideration before NCLAT is whether an unsolicited prospective resolution applicant (PRA) who did not figure in the final list of PRAs, could be allowed to submit a resolution plan for value maximization of the CD under the existing provisions of the Code and particularly regulation 39(1B) read with regulation 36B(7) of CIRP Regulations. NCLAT while dismissing the appeal observed that maximization of the value of the assets of the CD must be in alignment of the primary objective of the Code and cannot be accepted by giving a go by to the Code and regulations. It held that entertaining unsolicited plans from a person who did not figure in the final list of PRAs, would lead the CIRP of CD to be never ending.

25. Amar Nath Liquidator, Karan Processors Pvt. Ltd. (In Liquidation) Vs. Excise & Taxation Commissioner [CA (AT) (Ins) No. 221 of 2023 & I.A. No. 795, 796 of 2023]

Tax department had filed its claims before AA after the liquidation process was over, while the application for dissolution was pending. AA while allowing the application of tax department directed liquidator to ensure that the stakeholders, who have received any monies beyond their entitlement at the time of distribution, return the same, so that the department's dues are paid. Liquidator challenged AA's order before NCLAT. The NCLAT, while allowing the appeal, set aside AA's order. It distinguished present matter with *State Tax Officer v. Rainbow Papers Limited* based on the stage of process and remanded the impugned order, and directed AA to look into the practical difficulties for the purpose of recovering the amount from 29 stakeholders after the entire proceedings were over.

26. Kineta Global Limited Vs. IDBI Bank Limited & Ors. [IA Nos. 639, 641, 640-2021, 92, 97, 340, 622, 942, 1052-2022 & 417-2023 in Company Appeal (AT) (CH) (Insolvency) No.302-2021]

M/s Kineta Global Limited was declared as the H1 bidder during the process of compromise or arrangement. The AA *vide* order dated November 17, 2021 set aside the valuation conducted during liquidation and ordered fresh invitation of schemes. The H1 bidder filed an appeal before the NCLAT. The issues dealt in the appeal were (a) can a valuer ascribe 'zero' value to an asset merely because of disputes over it; (b) whether H1 bidder can be 'aggrieved person' as per section 61 of the Code. The NCLAT, while dismissing the appeal, observed that valuing the property at zero value on the premise that it was under dispute, is not maintainable. Merely because the CD has no valid or marketable title, the 'value of the property' cannot be described as zero. The 'assets of the CD' are to be revalued in accordance with regulation 35 of the Liquidation Regulations. It further held that H1 bidder cannot be an 'aggrieved person' as per section 61 of the Code as he has 'no say' in respect of matters, pertaining to the valuation of assets of the CD. H1 bidder cannot claim, a vested right, or any fundamental right to seek for an 'approval of his plan', and thereby claim to be a person 'aggrieved' in respect of the impugned order. It was also noted that sharing of the valuation reports with the potential resolution applicants by the liquidator is quite contrary to regulation 34(4) of Liquidation Regulations and IP is to ensure that confidentiality of information is maintained in all processes.

27. ACRE – 81 Trust, through its Trustee Asset Care & Reconstruction Enterprises Ltd., & Ors Vs. Pawan Kumar Goyal IRP of SARE Realty Projects Private Ltd., & Ors. [CA (AT) (Ins) No. 447 of 2023 & I.A. No. 1475, 1476 of 2023]

AA while dismissing the application filed for liquidation of CD, issued SCN to the assenting CoC members jointly, who voted in favour of the liquidation of the CD without even exploring the possibility of CD's resolution. On appeal by assenting members of CoC, the issue before NCLAT was whether CoC can take decision for liquidation of CD without publishing Form-G, EoI etc.? NCLAT while allowing the appeal observed that the CoC has the jurisdiction to pass agenda for liquidation of the CD by requisite majority of the voting share, but it should be before the approval of the resolution plan.

28. Ashmeet Singh Bhatia Vs. Pragati Impex India Pvt. Ltd. & Anr. [CA(AT) (Ins.) No. 1413 of 2023]

The issue for consideration was whether an application filed under section 65 of the Code is maintainable after the filing of the application under section 7, 9 or 10 of the Code or is it maintainable only after the admission of such an application? NCLAT while allowing the appeal held that the application under section 65 of the Code is maintainable any time after the filing of an application under section 7, 9 or 10 of the Code.

29. Paridhi Finvest Pvt. Ltd. Vs. Value Infracon Buyers Association and Anr. [C.A (AT) (Ins) No. 654 of 2022]

In the CIRP of CD, Value Infra Buyers association (VIBA) constituting 97% voting share of CoC, came forward for completion of the unfinished project and the resolution plan was approved by AA. The appellant, being the dissenting creditor, filed an appeal against the approved resolution plan. The issues raised were related to – (a) eligibility of VIBA to submit a resolution plan; (b) non submission of performance guarantee by VIBA; (c) appellant being dissenting FC is entitled for amount as per the security value, as it has equitable mortgage on 30 units / flats of the CD. NCLAT noted that AA had extended the CIRP period as no resolution plan was received and VIBA has come forward to complete the project, and the resolution plan submitted by them was approved by NCLT. Notably, CoC has not directed VIBA to submit performance security as they constitute 97% voting share. It further noted that section 30(2) provides that amount entitled to a dissenting FC shall not be less than the amount payable in the event of liquidation. As per the plan, the appellant is being paid ₹1 crore, however, as per its voting share (2.38%), the amount payable becomes ₹99.19 lakh. Therefore, the appellant is not being paid less than the amount payable in the event of liquidation. NCLAT cited the order of SC in the matter of *India Resurgence ARC Pvt. Ltd. v. Amit Metaliks & Anr. (Civil Appeal No. 1700 of 2021)*, to establish that amount to be paid to different classes of creditors is commercial wisdom of CoC and a dissenting secured creditor cannot suggest a higher amount to be paid with reference to the value of security interest. NCLAT also cited its order in the matter of *ICICI Bank Limited vs. BKM Industries Limited & Ors. [Company Appeal (AT) (Insolvency) No.405 of 2023],* wherein, it was held that there is no scope of distribution of assets among FCs as per security interest. NCLAT concluded by stating that '*... It is well settled that the security holder cannot insist payment of amount as per security interest, when the CD is resolved through a resolution plan'*.

30. Commissioner of State Tax Department Vs. Ramchandra Dallaram Chaudhary [CA AT (Ins) 34 of 2024]

The CIRP got admitted on 23rd August 2017 and liquidation order was passed on 25th October 2018. The State Tax Department filed its claims on 03rd November 2018 and 25th June 2020. Vide order dated 15th June 2023, NCLT directed liquidator to intimate State Tax Department regarding its claim as secured creditor, in light of Rainbow Papers judgment of SC. The claims were of three types and were treated as follows by the liquidator (i) claims assessed prior to ICD pertaining to Gujarat Sales Tax Act, 1969 were treated as unsecured, (ii) claims assessed prior to ICD, pertaining to Gujarat Value Added Tax Act, 2003 were treated as secured, and (iii) claims assessed during CIRP and liquidation, pertaining to Gujarat Value Added Tax Act, 2003 were treated as unsecured. Aggrieved by the treatment of certain claims as unsecured by liquidator, State Tax Department filed an application with NCLT, which was subsequently dismissed. Later, an appeal was filed before NCLAT, wherein it observed that (i) there is no parallel provision in Gujarat Sales Tax Act, 1969 as that of section 48 of the Gujarat Value Added Tax Act, 2003 which provides for the first charge in favour of the State Tax Government, hence the treatment of claims pertaining to Gujarat Sales Tax Act, 1969 as unsecured is valid, (ii) with regard to claims assessed during moratorium in CIRP / liquidation, the court observed that such action is violative of moratorium under section 14, and observed that "*… the Appellant during the moratorium period could determine the tax, interest, fine or any penalty which is due, however, the Appellant could not enforce his claims for recovery or levy of interest on the tax due during the period of Moratorium. It has been brought out that the Claims of Assessment Orders passed during the moratorium under Section 14 & 33(5) of the Code, have been rightly considered and admitted as 'Unsecured' Operational Debt.*"

31. Vijay Saini Vs. Shri Devender Singh & Ors. [CA (AT) (Ins.) No. 1194 of 2023 & I.A. No. 4200 of 2023 with other appeals]

RP challenged AA's order allowing withdrawal proposal under section 12A of the Code. NCLAT while allowing the appeal held that for computing voting with regard to section 12A of the Code, the same has to be done as per section 25A(3A) read with proviso to section 25A(3). It clarified that the voting under sub-section (3A), which is cast by Authorised Representative (AR) on the basis of vote of more than 50% of the voting share of the FC in a class, is subject to the proviso that has created a different voting pattern for section 12A. As per section 25A(3), if AR represents several FC, then he shall cast his vote in respect of each FC in accordance with instructions received from each FC to the extent of his voting share. When the section 12A specifically provides for 90% voting percentage for section 12A proposal, then 90% of the voting share of the creditor in class have to be taken into consideration. Since, voting by each homebuyer who represented creditor in class has to be computed as per his voting share and adding all vote shares of the creditor in class with any other FC if it is at least up to 90%, only then section 12A proposal is held to be approved.

32. Jaiprakash Associates Ltd. Vs. Jaypee Infratech Limited and Ors. [CA(AT)(Ins.) No. 548 of 2023 & IA No. 2643, 3702 of 2023]

An application under section 7 of Code was filed against CD and the same was admitted *vide* order dated August 9, 2017 of AA. Resolution plan of NBCC (India) Ltd. with some modification was approved by AA *vide* order dated March 3, 2020. Subsequently, after a round of litigation which travelled up to SC, the CoC approved the resolution plan and addendum submitted by Suraksha Realty on June 7, 2021 with a voting percentage of 98.66%. AA approved resolution plan of Suraksha Realty *vide* its order dated March 7, 2023. Subsequently, approved plan was challenged among others also by the holding company Jaiprakash Associates Ltd. (JAL) and Manoj Gaur, ex-director and PG to CD. JAL and ex-director averred

that the resolution plan is contrary to the provisions of the law in terms of section 30(2)(e) of the Code and Suraksha Realty is being unjustly enriched by taking over an asset rich company at a hefty haircut, while depriving JAL and PG to CD of their statutory rights of discharge under section 135 of the Contract Act, right to get possession of the securities under section 141, and their right to become creditors of Jaypee Infratech Limited. Issue for consideration before NCLAT is whether the resolution plan violates provision of section 30(2)(e) of the Code by removing the right of subrogation of the guarantors? NCLAT relied on judgment of SC in the matter of *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*, (2020) 8 SCC 531 which held that *'The law is thus well settled that after approval of the Resolution Plan, the Personal Guarantors and Corporate Guarantors have no right of subrogation especially when in the facts of the present case under Clause 34.50 of the Resolution Plan, right of subrogation is expressly extinguished. The debt against the Corporate Debtor might have extinguished after approval of the Resolution Plan but said consequence shall not be with regard to the Corporate Guarantors and the Personal Guarantors'.* NCLAT, dismissed the appeal on the rationale that SRA cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw PRA taking over the business of the CD into uncertainty.

33. EBIX Singapore Pte. Ltd. Vs. Mr. Mahender Kumar Khandelwal RP of Educomp Solutions Ltd & Anr. [CA (AT) (Ins.) No. 167 of 2024]

EBIX Singapore Pte. Ltd. (SRA) filed an appeal challenging approval of its own resolution plan on the ground that AA failed to look into the implementation of the plan. The issue before NCLAT was whether the subsequent events that transpired after the submission of the resolution plan namely, lapse of more than five years and deterioration of financial status of CD rendering the plan unimplementable, require consideration by AA. NCLAT while dismissing the appeal, observed that RP must examine that the resolution plan provides for implementation and supervision of the plan. Further, feasibility and viability of resolution plan is in the domain of commercial wisdom of CoC. As CoC has found the resolution plan feasible and viable, NCLAT held that SRA cannot ask the AA to look into feasibility and viability of the resolution plan.

34. Mr. Vikas Aggarwal Vs. Asian Colour Coated Ispat Limited and Ors. [CA(AT)(Ins.) No. 1104, 1105, 1107 & 1108 of 2020]

PGs have filed appeals challenging order of AA approving the resolution plan to the extent that it allows recourse to the FCs against the PGs of CD. As per the plan, entire debt of the CD owed to the FCs was assigned to a Special Purpose Vehicle (SPV) of SRA. Issue for consideration before NCLAT was whether recourse to the guarantee, survive after the entire debt of the CD stood assigned in favour of the SPV by the FCs as per approved resolution plan. NCLAT observed that doctrine of subrogation allows PG to resume the rights or remedies of the FCs against the CD. But the issue becomes different if it falls within the domain of the Code. There are clear and express provisions and stipulations under the resolution plan safeguarding the right of the FCs to pursue legal remedies against the PG. It noted that objective of the Code is to revive and rehabilitate the CD; and as such the right to subrogation may not survive in such situation. Despite the provisions of section 140 and 141 of the Indian Contract Act, 1872, the PG cannot claim any relief in view of the *non obstante* clause under section 238 of the Code. NCLAT while dismissing the appeal held that extinguishment of PG's right of subrogation is unavoidable and inaccessible fact in insolvency cases and any departure from such principles will have adverse impact on revival of the CD, interest of the FC and overall negative impact on the national economy.

35. **SEL Manufacturing Company Ltd. Vs. Punjab Small Industries & Export Corporation Ltd. [CA (AT) (Ins.) No. 881/2022 (IA Nos. 2446, 2447 & 2449 of 2022]**

Punjab Small Industries Export Corporation (PSIEC) executed a lease deed with CD for 99 years. The price of the plot of land was subject to variation with reference to the actual measurement of the plot and the cost of acquisition of land and enhancement of compensation on account of acquisition of land by the Court. PSIEC issued a demand notice for enhanced cost. In the meanwhile, the CD was pushed into CIRP. During the process PSIEC did not file any claims. Thereafter, the resolution plan was approved by AA. However, post approval of the resolution plan PSIEC issued a demand notice for the enhanced cost of land for the CD. On an application filed by CD, AA dismissed the same. However, CD preferred an appeal before NCLAT. While upholding AA's order, NCLAT held that the land was not owned by the CD but was a leased property, and any transfer of the leasehold land required the respondent's approval. NCLAT while dismissing the appeal, observed that rights of the state land development authorities over the assets cannot be overridden by the provisions of the Code and any transfer of rights under the resolution plan are subject to terms and conditions of the original allotment. It held that the 'clean slate principle' will not apply to the factual matrix of the present case, where there was prior demand from public sector land authority

36. **Gupta Textiles Through its Authorised Representative Vs. Darshan Patel and Anr. [CA(AT)(Ins.) No. 408 of 2024] 01.04.2024**

In the CIRP of the CD, sole CoC approved the resolution plan of SRA with 100% voting and the same was approved by AA. OC challenged the distribution proposed in the resolution plan on the pretext that the FC has been paid 100%, whereas OC has been paid meagre amount of 2.16% in cash and proposed payment of 49.96% as redeemable preference share; as such the same was not in compliance of section 30 (2)(b). NCLAT, while disposing the appeal, placed reliance on SC's judgment in *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Ltd. & Ors.*, and observed that when amount is distributed as per section 30(2)(b)(ii) and as per the priority under section 53(1) of Code by excluding the amount paid to the FC, Rs.15 lakhs for the government departments; and as no other creditors are on the record, the balance amount of the plan was to be distributed on *pro-rata* basis to the operational creditors. NCLAT partly modified the resolution plan by directing the SRA to distribute such amount to OC on *pro-rata* basis as per section 30(2)(b)(ii), by distributing the balance amount under the resolution plan in priority to the FC as per section 53(1).

37. **Rahul Gyanchandani Vs. Parsvnath Landmark Developers Private Limited [CA(AT)(Ins.) No. 309 of 2024]**

Homebuyers are the decree holder of Delhi-RERA *vide* its order dated 21.10.2022 wherein CD was directed to refund amount paid by the decree-holders along with interest. CD having failed to comply with the order of Delhi-RERA, homebuyers/FCs filed section 7 application before AA against the CD. However, such application was rejected by AA on the ground that it does not fulfil the criteria of section 7(2) of the Code as the same is filed by 4 decree holders/FCs only, whereas the total strength of the allottees is 488. On appeal, the issue for consideration before NCLAT was classification of allottees *vis-à-vis* decree holders for the purpose of threshold requirement under the second proviso to section 7(1) of the Code. NCLAT observed that when the underlying claim is in the form of a Court order or decree, that does not alter or disturb the status of the party. NCLAT while dismissing the appeal further held that mere fact that the order has been passed by RERA granting refund to allottee, does not change the status of allottee within the meaning of RERA Act, 2016.

38. Tulip Hotel Private Limited (The Suspended Board) Vs. JC Flowers Asset Reconstructions Private Limited [CA(AT)(Ins.) No. 1146 of 2023]

FC initiated CIRP against CD who was a corporate guarantor. Directors of CD preferred an appeal against admission order passed by AA on the grounds that the deed of guarantee was forged one and executed without authority that too subsequent to the sanction of loan. NCLAT clarified that AA is not expected to rely on handwriting expert's opinion and assessment contained therein in respect of the genuineness of the deed of guarantee. As regards the execution of deed of guarantee which is corollary of sanction terms, is governed by section 127 of the Indian Contract Act, 1872 and is binding on the CD. Further, while disposing the appeal, NCLAT relied on the judgment of SC in the case of *Laxmi Pat Surana Vs. Union Bank of India & Ars., Civil Appeal No. 2734 of 2020*, and held that the liability of the guarantor is coextensive with the principal borrower.

39. Devarajan Raman Vs. Principal Commissioner Income Tax, (Mumbai-1) & Ors. [CA (AT) (Ins.) No. 977 of 2023]

An application was filed by the liquidator before AA against the IT Department which had set off the income tax refund of Rs. 90.42 lakhs against the dues of the CD during the interregnum of passing liquidation order. Aggrieved by the dismissal of application by AA, the liquidator filed an appeal The issue before the NCLAT was (1) whether set-off exercised by the IT department, during the intervening period when the CIRP timeline period had expired and the liquidation order was to be passed, amounted to violation of the provisions of moratorium contained under section 14 of the Code, and, (2) whether the department is liable to refund the amount which it had set-off? NCLAT, while allowing the appeal held that any adjustment of any tax refund amount during moratorium period is not permitted in terms of section 14(1)(a), (b) and (c) of the Code. On the contention of the IT department that the set-off exercise was carried out by the department when neither was the resolution plan approved nor the liquidation order was passed, it observed that the set-off by IT Department reduced the funds available to other creditors, giving the department an unfair advantage. It held that the Department had no right to adjust past tax demands as the tax refund was part of the CD's assets and should be included in the liquidation assets.

40. Yamuna Expressway Industrial Development Authority Vs. Monitoring Committee of Jaypee Infratech Ltd. Through Anuj Jain, Secretary & Ors. [C.A (AT) (Ins.) No. 493 of 2023 & I.A. No. 3017, 3703 of 2023 & 2535, 2548, 2660, 2669 of 2024]

In the resolution plan approved by AA on 07th March, 2023, the claims of YEIDA towards payment of additional farmers compensation of Rs. 1,689 crore, was treated as operational debt and a sum of Rs. 10 lakh was provided against the same. YEIDA had also claimed external development charges (EDC) as secured claim. On appeal, NCLAT noted that payment of 64.7% additional farmers compensation has been upheld by Hon'ble SC in *YEIDA vs. Shakuntla Education and Welfare Society and Others [Civil Appeal Nos. 4178-4197 of 2022].* As per Concession Agreement between YEIDA and CD, the additional famers' compensation is part of acquisition cost for land transferred on lease and the acquisition cost is to be borne by the Concessionaire (CD). Further, as per section 13 of the Uttar Pradesh Industrial Area Development Act, 1976 ('the 1976 Act) where any Concession Agreement has been executed, and in case of default, arrears and penalty can be recovered from the transferee including any default in the payment of any consideration money or installment thereof or any other amount due on account of the transfer of any site or building by the Authority. Further the said law provides that in case of such default, the same shall constitute a charge over the property. Here,

the additional farmers' compensation is part of the acquisition cost, thus covered under section 13 of the 1976 Act. Accordingly, NCLAT held that YEIDA is secured operational creditor to the extent of additional farmers compensation. NCLAT upheld the AA's order approving the resolution plan except to the extent it deals with claim of YEIDA of Rs.1689 crores of additional farmers' compensation. NCLAT directed SRA to make payment to YEIDA of its secured operational debt of Rs.1689 crores in ratio of 79%, which have been paid to other secured creditors over the period of 4 years already proposed by the SRA.

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41. Shree Krishna Recycling India Pvt. Ltd. Vs. Mr. Sanjay Gupta, Liquidator, Shamken Multifab Ltd. [IA No.68/ALD/2024 in CP (IB) No.133/ALD/2017]

AA passed liquidation order against CD. In furtherance of the order, liquidator published a sale notice for sale of CD as going concern. After receipt of letter of intent, the successful bidder deposited ₹27.20 crore including initial amount towards Earnest Money Deposit and only balance consideration of ₹7.20 crore was payable within 30 days without interest and with interest beyond a specified date. Thereafter, successful bidder filed an IA before the AA seeking direction against the liquidator to treat the present sale as slump sale instead of going concern sale, in view of certain eventualities faced by it. Issue was placed before SCC, wherein it was resolved to grant consent for considering the sale of the assets as on slump sale basis subject to the payment of the entire balance amount within three days from the date of approval by the AA. In the facts of the case, AA allowed the application on the strength of resolution passed by SCC and after considering the fact that substantial payment has already been paid by the successful bidder applicant.

42. Axis Bank Limited Vs. Karvy Forde Search Private Limited and Ors. [IA 490- 491 of 2024 in CP(IB) No. 249/7/HDB/2022]

Axis Bank Limited (Bank) filed section 7 application on behalf of FC on the strength of Power of Attorney. The issue before AA was whether a '*power of attorney holder'* is distinct from an '*authorised person'*, and if so, whether the agent under a power of attorney is disentitled to maintain an application under section 7 of Code? AA noted rule 4(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Notification issued by the Central Government dated February 27, 2019 and the judgment of Hon'ble SC in *Rajendra Narottamdas Sheth & Anr. Vs. Chandra Prakash Jain & Anr. (Civil Appeal No.4222 of 2020)* which has clarified that unquestionably, an agent of a power of attorney can maintain a petition under section 7 of the Code, provided such power of attorney is ratified by the board of directors of the company. AA while dismissing the petition of FC held that the requirement that such a power of attorney shall be accompanied by a duly passed '*Board Resolution*' is not a mere '*technicality'* but mandatory legal requirement, and the non-compliance of which renders the said agent of such power of attorney incompetent to file an application under section 7 of Code.

43. Ashdan Properties Pvt. Ltd. Vs. Dr. Mamta Binani & CoC of Rolta India Ltd. [IA No. 1898 of 2024 in CP(IB) No. 530 of 2020]

During CIRP, RP issued RFRP wherein an RA (H1 bidder) submitted the resolution plan. Thereafter, a process note was issued by RP in order to invite enhanced bids from other PRAs, with a condition enabling the CoC to negotiate with the PRAs on the price line of H1. Subsequent to the conclusion of the negotiation process, the RP requested the PRAs to submit their final resolution plan. Aggrieved by the conduct of CoC and RP, an appeal was filed by

the H1 bidder. The issue before the AA was whether the RP and the CoC were acting within their power when they invited enhanced offers from other PRAs? AA observed that CoC and RP's conduct was in furtherance of maximization of the value of the assets of CD. Moreover, Regulation 39(1A) of the CIRP Regulations empowers CoC to negotiate with as many PRAs in order to increase the value of the resolution plan, even after the completion of challenge mechanism. It held that CoC in its commercial wisdom and in terms of stipulations in the RFRP, can decide to approve a resolution plan or renegotiate with all the resolution applicants in order to obtain an enhanced offer for the CD.