

Insufficiency in stamp duty payment on finance documents not to affect admission of IBC proceedings

In the matter of *Mr. Praful Nanji Satra v. Vistra ITCL (India) Ltd. & Ors.*¹, the Principal Bench of the National Company Law Appellate Tribunal (“NCLAT”) observed that insufficiency in payment of stamp duty will not affect admission of corporate insolvency resolution process (“CIRP”) under the Insolvency and Bankruptcy Code, 2016 (“IBC”) for a valid debt.

Brief Facts

Satra Properties (India) Ltd. (“**Corporate Debtor**”) was engaged in the business of real estate. The Corporate Debtor had issued secured non-convertible debentures (“**NCDs**”) for an amount upto INR 56,00,00,000 (Indian Rupees fifty six crore) to the respondents to raise funds for certain projects. The NCDs were issued pursuant to a debenture subscription agreement and a debenture trust deed (“**NCD Documents**”).

Due to financial difficulties faced by the Corporate Debtor, the NCDs could not be redeemed in accordance with the agreed redemption schedule. The NCD holders, through the debenture trustee, filed an application under Section 7 of the IBC for initiation of the CIRP against the Corporate Debtor.

The application was admitted by the National Company Law Tribunal, Mumbai (“**NCLT**”). The Corporate Debtor challenged the application on the ground that the NCD Documents were insufficiently stamped. Pursuant to a reference made to it, the Special Bench of NCLT held that the stamp duty issue is irrelevant and uncalled for in an application under Section 7 of the IBC more so when the ‘debt’ and ‘default’ are proved otherwise without looking into those documents.

The appellants challenged the order of the NCLT and, *inter alia*, contended that the NCD Documents were insufficiently stamped and as per the Maharashtra Stamp Act, 1958, insufficiently stamped documents cannot be admitted as evidence.

Issue

The issue before the NCLAT was whether CIRP proceedings can be admitted against the Corporate Debtor where the underlying documents pursuant to which financial debt was incurred were insufficiently stamped.

Analysis and Findings of the NCLAT

The NCLAT referred to the findings of the Supreme Court of India in the case of *Innoventive Industries Ltd. v. ICICI Bank & Anr.*², wherein, the Supreme Court has held the following:

¹ Company Appeal (AT) (Ins.) No. 713 of 2020. Order dated August 8, 2022.

² (2018) 1 SCC 407

*“On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the **adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.** It is of no matter that the debt is disputed so long as the debt is “due” i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

In view of the above, the NCLAT held that NCD Documents are relevant in establishing the debt of the Corporate Debtor as claimed in Section 7 application, whose repayment is in default as per the NCD Documents. The NCLAT dismissed the appeal and held that the CIRP application was correctly admitted by NCLT.

The NCLAT observed that the issue of debt being due and payable is not interdicted by any law but only a technical deficiency of insufficiency of their stamping has been raised which can be cured.

JSA Comment

The judgement brings to rest the conflicting judgements of certain NCLTs where it was held that insufficiently stamped documents cannot be admitted in evidence in a CIRP. This is a welcome clarification, and curable defects (such as insufficient payment of stamp duty) ought not affect the liability of a corporate debtor in a CIRP.

The NCLAT judgement is also a confirmation of the equitable principle that a person cannot take advantage of a wrong that he has committed. In this case, the obligation to pay stamp duty was on the Corporate Debtor and the Corporate Debtor was not allowed by the NCLAT to take advantage of its own failure.

While the NCLAT has upheld the rights of lenders to commence a CIRP against a corporate debtor even if the documents are insufficiently stamped, it would be prudent for lenders to ensure that appropriate stamp duty under law is paid on financing documents to preclude any hindrances at the time of enforcement or CIRP.

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