

## **Insolvency Newsletter - (March – April 2023)**

This edition of the Insolvency newsletter covers some of the key judicial developments under the IBC during the period March- April 2023. The newsletter provides succinct summaries of the key judicial pronouncements by the National Company Law Tribunal, National Company Appellate Law Tribunal and the Supreme Court of India under IBC.

### **Impacting resolution process and resolution plans**

#### **RP cannot be directed by NCLT to convene COC meetings to consider resolution plans**

Buildwell was an unsuccessful prospective resolution applicant in the CIRP of Nucleus Premium Properties Private Limited. Buildwell requested the NCLT to direct the RP to convene a meeting of the COC to consider its revised resolution plan. This request was sought by Buildwell after the COC of Nucleus Premium had passed a resolution for the liquidation of Nucleus Premium and the RP had filed an application before the NCLT seeking an order for the liquidation under Section 33(1) of IBC.

The NCLT held that it is the RP's prerogative to convene a meeting of the COC. Thereby, the RP cannot be directed by the NCLT to convene such meeting at the request of an outsider. (*Buildwell v. Mr. Dileep KP and Anr.*<sup>1</sup>)

#### **Issuance of a fresh invitation for EoI does not amount to 'modification' under Regulation 36A(4A) of the CIRP Regulations, 2016**

The NCLT observed that the word "modification" under Regulation 36A(4A) of the CIRP Regulations, 2016 refers to minor changes to the invitation for EoI and does not include the issuance of a fresh invitation for EoI during a CIRP. (*Anil Khandelwal v. Rajendra Kumar Jain and Ors.*<sup>2</sup>)

#### **Application for initiating resolution process can be withdrawn even prior to the constitution of COC**

The Supreme Court held that while Section 12A of the IBC permits withdrawal of applications admitted under Sections 7, 9 and 10 of the IBC with the approval of 90% voting share of COC, if the same has been constituted. However, it does not expressly bar entertaining the applications for withdrawal prior to the constitution of the COC.

Regulation 30A of the CIRP Regulations, 2016 allows applications for withdrawal of CIRP to be entertained even before the constitution to COC. While the CIRP Regulations, 2016 are a subordinate legislation to the IBC, Regulation 30A of the CIRP Regulations, 2016 is not in any conflict with Section 12A of the IBC and the same only furthers the cause introduced in Section 12A of the IBC.

<sup>1</sup> March, 2023, NCLT, Kochi [IA(IBC) No. 79/KOB/2023 in CP(IB) No. 01/KOB/2021]

<sup>2</sup> March, 2023, NCLT, Chandigarh [IA No. 1782/2022 in CP(IB) No. 198/Chd/Pb/2021]

Further, the Supreme Court held that for the purposes of withdrawal, any settlement made using the funds of the corporate debtor was not violative of Section 14 of the IBC (relating to moratorium) and the NCLT has inherent powers under Rule 11 of the NCLT Rules, 2016 to either allow or disallow an application for withdrawal of the CIRP even prior to the constitution of the COC. (*Abhishek Singh v. Huhtamaki PPL Limited & Anr.*<sup>3</sup>) For a detailed analysis, please refer to the [JSA Prism of April 5, 2023](#).

### Application for initiating resolution process can be withdrawn even if objected to by other creditors (which have not filed the application for initiating CIRP against the corporate debtor)

The withdrawal of CIRP proceedings under Section 12A of IBC on account of settlement with the applicant initiating the CIRP process was objected by certain other financial creditors of the corporate debtor.

The NCLT, by relying on the judgments of the Supreme Court in *Swiss Ribbons Private Limited and Anr. v. Union of India and Ors.*<sup>4</sup> and *Ashok G. Rajani v. Beacon Trusteeship Limited and Ors.*<sup>5</sup>, held that prior to the constitution of the COC in the CIRP of a corporate debtor, an application for the withdrawal of the CIRP can directly be made by a party before the NCLT and there is no bar to such withdrawal of the CIRP. (*Satish Sadashiv Rane v. Shah Group Builders Limited*<sup>6</sup>)

### Claims filed after implementation of a resolution plan cannot be entertained

A resolution plan cannot be challenged on the grounds that it does not provide for full payment of outstanding electricity dues and instead only a part of it. The NCLAT stated that the COC had found the resolution plan feasible and viable and hence, the plan was approved by the COC after which it was approved by the NCLT. Further, the NCLAT held that after the implementation of a resolution plan, no subsequent claim can be entertained. (*Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Limited v. Jagish Kumar, resolution professional for Madhya Bharat Phosphate Private Limited & Anr.*<sup>7</sup>)

### Approval of resolution plan can be challenged only if the plan is violative of any statutory provision

An unsecured financial creditor of the corporate debtor appealed against a resolution plan approved by the NCLT on the grounds that very limited amount had been paid to it and other operational creditors under the resolution plan. The NCLAT dismissed the appeal of the appellant and stated that the approval of a resolution plan by the NCLT can only be questioned only if the plan is violative of any statutory provision, including Section 30(2) of the IBC, which did not happen in the instant case. (*Pani Logistics, through its sole proprietor, Kiran M. Jain v. Vikas G. Jain*<sup>8</sup>)

### Operational creditors are not entitled to receive a full copy of the resolution plan till the time it is approved by NCLT

The NCLT held that a resolution plan remains a confidential document till the time it is approved by the NCLT as per the provisions of IBC, and hence, the RP cannot be directed to share a complete set of the resolution plan with operational creditors. (*Oceanic Technical Services v. Ajay Joshi, RP of Indian Steel Corporation Limited*<sup>9</sup>)

<sup>3</sup> 2023 SCC OnLine SC 349.

<sup>4</sup> (2019) 4 SCC 17

<sup>5</sup> 2022 SCC OnLine SC 1275

<sup>6</sup> March, 2023 NCLT Mumbai [IA No. 2209/2021 in CP(IB)/2207/MB-IV/2019]

<sup>7</sup> April, 2023, NCLAT, Delhi [Company Appeal (AT)(Ins) No. 1113 of 2020 & I.A. No. 443 of 2022]

<sup>8</sup> April, 2023, NCLAT, Delhi [2023 SCC OnLine NCLAT 172]

<sup>9</sup> April, 2023, NCLT, Mumbai [IA/351/2023 in CP(IB) No. 979/(MB)/2020]

## Dissenting secured financial creditors to not be given preference over other creditors

The NCLT referred to Supreme Court's judgment in *India Resurgence ARC Private v. Amit Metaliks Limited and Another*<sup>10</sup>, and reiterated that a creditor should not be treated as higher than other creditors merely because it holds security interest over the corporate debtor's movable/immovable property. It further observed that if (dissenting) secured creditors are given preference over other creditors, then every secured creditor would dissent to the resolution plan and the same would lead to more liquidations rather than resolutions, which would not lead to the maximization of the value for the corporate debtor and the purpose of the CIRP would fail. (*ICICI Bank Limited v. Mr. Pratim Bayal (Resolution Professional) & Anr., v. BKM Industries Limited*<sup>11</sup>)

## Recovery of amounts by tax authorities directly from the customers of the corporate debtor during CIRP is violative of the moratorium provisions

The GST department had issued notices to various customers of the corporate debtor, calling upon them to deposit any amount due by them to the corporate debtor directly with the GST Department. The NCLT held that such recovery made by the GST Department after the commencement of the CIRP of the corporate debtor was violative of the moratorium prevailing in terms of Section 14 of IBC. (*CA Prashant Jain, RP of Greatwall Corporate Services Private Limited v. Mr. Sunil V. Chavan, Deputy Commissioner of State Tax*<sup>12</sup>)

## Even after completion of challenge mechanism under Regulation 39(1A) of the CIRP Regulations, 2016, the COC retains its jurisdiction to negotiate with one or other resolution applicants, or to annul the resolution process and re-issue the request for resolution plan

The decision of the COC to conduct an extended round of challenge mechanism with the existing bidders was challenged by one of bidders. While interpreting Regulation 39(1A) of the CIRP Regulations, 2016 the NCLAT held that:

- 1) Regulation 39(1A) cannot be interpreted to read that it contains any fetter on the right of the COC to take further action as per the request for resolution plan, after receipt of the resolution plan consequent to the challenge mechanism.
- 2) There is no implied prohibition on the jurisdiction of the COC to enter into any further negotiations with a resolution applicant or to further ask a resolution applicant to increase its resolution plan value.
- 3) Regulation 39(1A) contemplates modification of resolution plans and improvement of resolution plans at the instance of the resolution applicants. The above modification or improvement in the plan cannot be confined only to the value of the plan. It covers the entire plan and if it is held that any modification or improvement is not permissible after conclusion of process under Regulation 39(1A), it will become a handicap in successful resolution of the corporate debtor, since COC may opine that certain modification and improvement in the resolution plan are necessary for successful resolution of the corporate debtor.
- 4) Conclusion of the challenge mechanism does not give the highest bidder the right to claim that its resolution plan should be put for voting before the COC. The COC is not obliged to approve the resolution plan which has the highest NPV or scored the highest as per the evaluation matrix. Any resolution plan will be approved solely on the basis of the commercial wisdom of the COC. (*Visra (ITCL) India Limited v. Torrent Investments Private Limited & Ors. with Indusind International Holdings Limited v. Torrent Investments Private Limited & Ors.*<sup>13</sup>)

<sup>10</sup> 2021 SCC Online SC 409

<sup>11</sup> March, 2023, NCLT Kolkata [IA. (IB) No. 471/KB/2022 In C.P. (IB) No. 2078/KB/2019]

<sup>12</sup> March, 2023, NCLT, Mumbai [IA No. 2474 of 2022 in CP No. 73 of 2021]

<sup>13</sup> March, 2023, NCLAT, Delhi [2023 SCC OnLine NCLAT 110]

## Impacting initiation of CIRP by financial creditors:

### The Vidarbha impact: Discretion of NCLT to admit CIRP

The application for CIRP of Madhucon Projects Limited by SREI Equipment Finance Limited was kept in abeyance for 3 (three) months as the amount receivable by Madhucon Projects Limited under the court decree and the arbitral award were more than the debt amount claimed to be in default under the application. The creditor was however granted liberty to approach the NCLT if its dues continue to remain unpaid after the said period of 3 (three) months. The NCLT relied on the judgment of the Supreme Court of India in the matter of *Vidarbha Industries Power Limited v. Axis Bank Limited*<sup>14</sup>, and observed that while dealing with an application for initiation of CIRP, the NCLT must necessarily apply its mind to the relevant factors of the case, including the feasibility of the initiation of CIRP. The NCLT must not confine the enquiry merely to see whether there has been a debt and a default in repayment of such debt. (*SREI Equipment Finance Limited v. Madhucon Projects Limited*<sup>15</sup>)

### Failure to settle within the time granted by the tribunal constitutes a fresh default

The NCLAT had granted a period of 6 (six) months to Green Gateway (corporate debtor) to settle its default with Union Bank of India. Upon failure by Green Gateway to settle the amount under default, Union Bank of India recommenced the CIRP proceedings. Such proceedings were contested by the shareholders of Green Gateway on the basis that the proceedings are barred by limitation as the date of default for the purposes of the application should be the date on which the account of Green Gateway was classified as a non-performing asset. The NCLAT held that the date of default was the date on which the period of 6 (six) months ended and not the date on which the account of Green Gateway was classified as a non-performing asset. Such default should be treated as a fresh default. (*Air Travel Enterprises India Limited and Anr. v. Union Bank of India and Anr.*<sup>16</sup>)

### Dispute in relation to assignment of debt cannot halt IBC proceedings

The financial debt extended to C&M Farming Limited was acquired by Omkara Assets Reconstruction Private Limited from Business Co-operative Bank. The assignment of such debt was challenged by C&M Farming Limited. It sought that the hearing of the application for initiation of its CIRP be deferred till the dispute in relation to the assignment of debt is adjudicated upon by the Court of Civil judge.

The NCLT, while dismissing this application, held that CIRP proceedings cannot not be halted indefinitely on the ground that the legality of the said assignment was pending for adjudication before the Civil Court. The CIRP petition will need to be decided in a time bound manner as per the provisions of IBC. (*C&M Farming Limited v. Omkara Assets Reconstruction Private Limited*<sup>17</sup>)

### Default by the corporate guarantor necessary to initiate CIRP against it

SBI had extended a certain credit facility to Deogiri Infrastructure Private Limited (borrower), which was guaranteed by Shaliwahan Farms Private Limited (guarantor). On default in repayment of the loan by the borrower, SBI issued a demand notice to the borrower under the provisions of the SARFAESI Act. Thereafter, SBI filed an application under Section 7 of IBC seeking initiation of CIRP of the guarantor. SBI had not issued any demand notice to the guarantor.

The NCLT held that in absence of a demand being made on the corporate guarantor to repay the facility amount, the corporate guarantor cannot be said to have committed any default. Accordingly, CIRP cannot be initiated against the corporate guarantor in such case. (*State Bank of India v. Shaliwahan Farms Private Limited*<sup>18</sup>)

### Default in payment of interest amount only cannot be a ground for initiating CIRP

The corporate debtor was liable to pay a total amount of INR 28,00,000 (Indian Rupees twenty eight lakh) to a financial creditor on account of certain consent terms. However, the corporate debtor defaulted in making a payment of INR

<sup>14</sup> 2022 SCC OnLine SC 841

<sup>15</sup> March, 2023, NCLT Hyderabad [IA(IBC) 1131/2022 and Rst. A(IBC) 6/2023 in CP(IB) No. 12/7/HDB/2021]

<sup>16</sup> March, 2023, NCLAT, Chennai [CA(AT)(CH)(Ins.) No. 70 of 2023]

<sup>17</sup> March, 2023, NCLT, Mumbai [IA No. 1193 of 2022 in CP(IB) No. 1031 of 2021]

<sup>18</sup> March, 2023, NCLT, Mumbai[CP(IB)-1280(MB)/2022]

8,00,000 (Indian Rupees eight lakh), out of the total payable amount under the consent terms. The financial creditor filed an application under Section 7 of IBC seeking initiation of CIRP against the corporate debtor.

The NCLT observed that the whole of the principal amount claimed by the financial creditor was paid and the unpaid amount under the consent terms was on account of balance interest amount due. In view of this, the NCLT held that since IBC envisages the resolution of debts and is not a recovery legislation, the application for initiation of CIRP only on account of unpaid interest amount was not maintainable. (*Ganak Technologies Private Limited v. Vaishvik Foods Private Limited*<sup>19</sup>)

### Principal amount of CCDs cannot be admitted as 'financial debt' once an event occurs which triggers their mandatory conversion into equity shares

Agritrade Power Holding Mauritius Limited (“**APHML**”) was the holder of certain compulsorily convertible debentures (“**CCDs**”) issued by SKS Power Generation (Chattisgarh) Limited (corporate debtor) which were mandatorily convertible into the equity shares of the corporate debtor, to the extent of their aggregate principal amount in case, and on the date on which, any application for winding up, liquidation or dissolution of SKS (or any analogous event) is filed. Upon commencement of the CIRP of the corporate debtor, APHML filed its claim with the RP of the corporate debtor. The claim amount comprised of the principal and the interest amount payable by the corporate debtor in respect of such CCDs. However, the said claim was rejected by the RP.

The NCLT stated that the said CCDs will be considered to be debt till the date of their mandatory conversion into equity shares. It further held that the initiation of CIRP of the corporate debtor triggered the mandatory conversion of the CCDs into the equity shares of the corporate debtor to the extent of the aggregate principal amount of the CCDs and such CCDs ceased to exist on the insolvency commencement date (ICD). Therefore, such principal amount cannot be claimed by APHML as “debt” due to it by the corporate debtor as on the ICD. However, the NCLT noted that the CCDs were subscribed by APHML against payment of interest, which duly constitutes disbursement against consideration of time value of money. Therefore, the NCLT directed that the amount of accrued interest in respect of the CCDs as on the ICD should be admitted as a ‘financial debt’ in the CIRP of the corporate debtor. (*Agritrade Power Holding Mauritius Limited v. Ashish Arjunkerath*<sup>20</sup>)

### Acknowledgment of debt by principal borrower is considered to be deemed acknowledgement of debt by the guarantor

The NCLAT held that the one-time settlement proposals made by Victory Electricals Limited (principal borrower) to SBI constitute acknowledgment of debt for the purposes of extending the limitation period under the provisions of the Limitation Act, 1963. Since the liability of a guarantor is co-extensive with that of the principal borrower in terms of the Section 128 of the Indian Contract Act, 1872, the acknowledgment of debt by Victory Electricals Limited would be considered to be deemed acknowledgement of debt by Hackbridge Hewittic and Easun Limited (the corporate debtor) being the guarantor. Therefore, the NCLAT set aside the order of the NCLT which had previously dismissed the application for initiating CIRP against the corporate debtor on the grounds that it was filed after expiry of the limitation period of 3 (three) years. (*State Bank of India v. Hackbridge Hewittic and Easun Limited*<sup>21</sup>)

## Impacting initiation of CIRP by operational creditors:

### CIRP cannot be initiated by operational creditor pending resolution of dispute before MSME Council

Arpana Packaging Private Limited (operational creditor) filed an application for initiation of CIRP against Regma Ceramics Private Limited (corporate debtor) on the ground of non-payment of certain amounts. The operational creditor had previously approached the chairman of the Micro and Small Enterprises Facilitation Council under Section 15 of MSME Act in relation to non-payment of amounts by the corporate debtor.

<sup>19</sup> March, 2023, NCLT, Mumbai [CP(IB) No. 3195/MB-IV/2019]

<sup>20</sup> March, 2023, NCLT, Mumbai [IA No. 2551/2022 in CP(IB) No. 893/MB/C-IV/2021]

<sup>21</sup> April, 2023, NCLAT, Chennai [(IA No. 614 of 2021) Company Appeal (AT) (CH) (Ins.) No. 05 of 2021]

The NCLAT held that the fact that operational creditor had approached the Micro and Small Enterprises Facilitation Council under the MSMED Act shows that there was a pre-existing dispute between the parties and the unpaid amount was the subject matter of a controversy pending for resolution before the Council. Consequently, the NCLAT held that the application of CIRP cannot be admitted due to pre-existing dispute between the parties. (*Arpana Packaging Private Limited v. Regma Ceramics Private Limited*<sup>22</sup>)

### The amount of interest cannot be clubbed with the principal amount to compute the threshold of INR 1,00,00,000 (Indian Rupees one crore) for initiation of CIRP

The issue under consideration by NCLT was whether 'interest' could be clubbed with principal debt to crossover the threshold limit of INR 1,00,00,000 (Indian Rupees one crore) for filing a Section 9 of IBC, application for initiating CIRP. The NCLT was of the view that levying of interest was neither mentioned in any agreement entered into by the parties, nor was it specifically admitted or promised to be paid by the corporate debtor. Therefore, it could not be clubbed with the principal amount due, to hold the interest as a 'debt' to cross over the threshold amount of INR 1,00,00,000 (Indian Rupees one crore) for initiating CIRP against the corporate debtor. (*Gandhar Oil Refinery (India) Limited v. City Oil Private Limited*<sup>23</sup>)

### Application for CIRP cannot be filed prior to expiry of 10 (ten) days from the date the demand notice was actually received by the corporate debtor

The NCLAT considered whether the application under Section 9 was premature as it was filed before the expiry of 10 (ten) days from the date of demand notice under Section 8 of the IBC.

While the appellant contended that the demand notice was first offered to be delivered to the respondent on an earlier date (i.e., more than 10 (ten) days prior to the application being filed), the same could not be delivered as the premises of the respondent were locked. The NCLAT stated that the demand notice is to be considered as delivered on the day of actual receipt of the notice by the respondent and cannot be presumed to be delivered on the date it was first offered to be delivered and accordingly, the application was dismissed. (*J.K. Jute Mill Mazdoor Morcha v. Juggilal Kamalpat Jute Mill Company Limited*<sup>24</sup>)

## Financial debt v. Operational debt:

### Tax dues converted into interest free loans do not constitute 'financial debt'

A certain amount of sales tax owed by Haryana Telecom Limited (corporate debtor) to the government of State of Haryana was converted into interest free loan under a policy introduced by the Government. The NCLT held that the conversion of sales tax into an interest free loan, as envisaged under the policy of the Government, did not entail any consideration for time value of money since the payment of interest was not an integral part of the policy. Thereby, the claim of the Government did not constitute "financial debt" under Section 5(8) of IBC but was an "operational debt". (*State of Haryana v. Sanyam Goel*<sup>25</sup>)

### A decree holder will be classified as a "financial debt" or an "operational debt" depending upon the nature of the underlying transaction from which the decretal debt has arisen

NCLT held that the categorisation of the debt due by a corporate debtor to a decree holder as "financial debt" or "operational debt" under the provisions of IBC depends upon the nature of the transaction from which the decretal debt has arisen. If the decretal debt is in the nature of "operational debt" (i.e., arises in respect of supply of goods), the decree holder will be classified as an "operational creditor" of the corporate debtor. (*Pandit Associates v. Sanvijay Alloys and Power Limited*<sup>26</sup>)

<sup>22</sup> April, 2023, NCLAT, Chennai [(IA No. 331/2023) in Company Appeal (AT) (CH) (Ins) No. 94/2023]

<sup>23</sup> April, 2023, NCLT, Kolkata [(IA No. 331/2023) in Company Appeal (AT) (CH) (Ins) No. 94/2023]

<sup>24</sup> March, 2023, NCLAT, Delhi [Company Appeal (AT)(Ins) No. 82 of 2017]

<sup>25</sup> March, 2023, NCLT, Chandigarh [IA No. 829/2020 in CP(IB) No. 515/Chd/2019]

<sup>26</sup> March, 2023, NCLT, Mumbai [CP(IB)-562(MB)/2022]

## Advance amount converted into an interest bearing refundable advance is classified as a 'financial debt'

While considering whether the amounts claimed were 'financial debt' or 'operational debt, the NCLT observed that the advance amount was paid to the corporate debtor under a MoU in consideration of the development rights in the property of the corporate debtor and did not constitute 'operational debt'. However, since the advance amount got converted into an interest bearing refundable advance upon the termination of the MoU, such advance amount should be considered to be 'financial debt'. (*Sheth Developers Private Limited & Anr. v. Vichitra Narayana Pathak (IRP of Golden Tobacco Limited) in the matter of Arrow Engineering Limited v. Golden Tobacco Limited*<sup>27</sup>)

## Preferential transactions

### Appropriation of margin money by banks cannot be held to be a 'preferential transaction' under IBC

The NCLT held that the release and appropriation of the margin money held by banks is in their ordinary course of business of recovery of their outstanding dues. Such appropriation of fixed deposits do not constitute a preferential transaction in terms of Section 43 of IBC. Further, the NCLT held that as per Section 66(1) of IBC, the activities of only corporate debtors can be classified as fraudulent transactions and not that of its creditors. (*Dhiren Shantilal Shah v. Babyu Rajeev Chandrasekharan and Ors.*<sup>28</sup>)

## Powers and jurisdiction of NCLT and NCLAT:

### Inherent powers cannot be used to modify an earlier order

Rule 11 of the NCLT, 2016, cannot be used to revisit the findings of the NCLAT or re-open to examine the findings on questions of fact. Further the NCLAT is not empowered under the said rule to modify or review its earlier order. (*Punjab National Bank v. Ashish Chhawchharia & Ors*<sup>29</sup>)

### NCLT does not have jurisdiction to determine any and every question relating to the corporate debtor

During liquidation of the corporate debtor, the Income Tax authorities issued a provisional attachment notice and attached certain land of the corporate debtor which was challenged by the liquidator. The NCLAT held that the NCLT is not the proper fora to determine the issues of attachment of property under the Prohibition of Benami Property Transaction Act, 1988 and that Section 60(5) of the IBC is not an all pervasive section conferring jurisdiction upon the NCLT to determine any and every question relating to the corporate debtor and the liquidator cannot take umbrage under Section 32A for avoiding such an attachment since the said section is attracted only when the resolution plan is approved by the NCLT. (*Mr. P. Eswaramoorthy v. the Deputy Commissioner of Income Tax (Benami Prohibition)*<sup>30</sup>)

## Miscellaneous

### Forum for filing insolvency proceedings against personal guarantor

The NCLAT held that since the insolvency resolution process of the corporate debtor had come to an end, the NCLT having jurisdiction in the state where the registered office of the corporate debtor is located, would be the appropriate

<sup>27</sup> March, 2023, NCLT Ahmedabad [IA No. 690 (Ahm) 2020 in CP(IB) No. 268/NCLT/AHM/2020]

<sup>28</sup> April, 2023, NCLT, Mumbai [IA-972/2021 in CP(IB)4164(MB)2019]

<sup>29</sup> April 28, 2023, NCLAT, Delhi [I.A. No. 4254 of 2022 in Company Appeal (AT)(Ins) No. 584 of 2021]

<sup>30</sup> March, 2023, NCLAT, Chennai [Company Appeal (AT) (CH) (Ins.) No. 188 of 2022]

forum for insolvency resolution of the personal guarantor of such corporate debtor. (*Mr. Ankit Miglani v. State Bank of India*<sup>31</sup>)

### The assets of a corporate debtor have immunity against any action taken by the ED for an offence committed prior to insolvency commencement date

The NCLT held that Section 32A(2) of IBC provides immunity to the property of a corporate debtor, which forms part of the approved resolution plan, from any action taken by any authority in relation to an offence committed prior to the commencement of the CIRP. Thereby, the attachment order of the Enforcement Directorate cannot continue to operate after the commencement of the CIRP of the corporate debtor and the Enforcement Directorate must release the assets attached thereunder. (*STCI v. DSK Southern Projects Private Limited*<sup>32</sup>)

### Duty of the liquidator to protect the existence of the corporate debtor as far as possible

In case of an auction during liquidation, if an option is given to the parties that they could purchase the corporate debtor as a going concern along with its assets or only purchase a set of assets of the corporate debtor and if equal bids are received from bidders under the different options, the liquidator is free to choose the bidder which would ensure survival of the corporate debtor. (*Torreid India Private Limited v. Arrhum Tradelink Private Limited & Ors.*<sup>33</sup>)

## GLOSSARY OF TERMS

<b>CIRP</b>	Corporate Insolvency Resolution Process
<b>CIRP Regulations, 2016</b>	IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
<b>COC</b>	Committee of Creditors
<b>CCDs</b>	Compulsorily Convertible Debentures
<b>EoI</b>	Expression of Interest
<b>GST</b>	Goods and Services Tax
<b>IBC</b>	Insolvency and Bankruptcy Code, 2016
<b>ICD</b>	Insolvency Commencement Date
<b>INR</b>	Indian Rupee
<b>MSME</b>	Ministry of Micro, Small and Medium Enterprises
<b>MSMED Act</b>	Micro Small and Medium Enterprises Development Act, 2006
<b>MoU</b>	Memorandum of Understanding
<b>NCLAT</b>	National Company Law Appellate Tribunal
<b>NCLT</b>	National Company Law Tribunal
<b>NCLT Rules, 2016</b>	The National Company Law Tribunal Rules, 2016
<b>NPV</b>	Net Present Value
<b>RP</b>	Resolution Professional

<sup>31</sup> April, 2023, NCLAT, Delhi [2023 SCC OnLine NCLAT 165]

<sup>32</sup> April, 2023, NCLT, Mumbai [IA-383/2022 in CP.(IB)178/MB-IV/2021]

<sup>33</sup> March, 2023, NCLAT, Delhi [Company Appeal (AT)(Ins) No. 943 of 2022]



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<b>SARFAESI Act</b>	The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
<b>SBI</b>	State Bank of India

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## Insolvency and Debt Restructuring Practice

JSA is recognized as one of the market leaders in India in the field of insolvency and debt restructuring. Our practice comprises legal professionals from the banking & finance, corporate and dispute resolution practices serving clients pan India on insolvency and debt restructuring assignments. We advise both lenders and borrowers in restructuring and refinancing their debt including through an out-of-court restructuring as per the guidelines issued by the Reserve Bank of India, asset reconstruction, one-time settlements as well as other modes of restructuring. We also regularly advise creditors, bidders (resolution applicants), resolution professionals as well as promoters in connection with corporate insolvencies and liquidation under the IBC. We have been involved in some of the largest insolvency and debt restructuring assignments in the country. Our scope of work includes formulating a strategy for debt restructuring, evaluating various options available to different stakeholders, preparing and reviewing restructuring agreements and resolution plans, advising on implementation of resolution plans and representing diverse stakeholders before various courts and tribunals. JSA's immense experience in capital markets & securities, M&A, projects & infrastructure and real estate law, combined with the requisite sectoral expertise, enables the firm to provide seamless service and in-depth legal advice and solutions on complex insolvency and restructuring matters.

**This Newsletter has been prepared by:**



**Aashit Shah**  
Partner



**Utsav Johri**  
Partner



**Megha Saraf**  
Partner



**Sahil Unadkat**  
Senior Associate



**Aishna Jain**  
Associate



**Malika Tiwari**  
Associate



17 Practices and  
24 Ranked Lawyers



16 Practices and  
11 Ranked Lawyers



7 Practices and  
2 Ranked Lawyers



11 Practices and  
39 Ranked Partners  
**IFLR1000 APAC  
Rankings 2022**

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Banking & Finance Team  
of the Year

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Fintech Team of the Year

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Restructuring & Insolvency  
Team of the Year



Among Top 7 Best Overall  
Law Firms in India and  
9 Ranked Practices

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11 winning Deals in  
IBLJ Deals of the Year

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10 A List Lawyers in  
IBLJ Top 100 Lawyer List



Banking & Financial Services  
Law Firm of the Year 2022

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Dispute Resolution Law  
Firm of the Year 2022

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Equity Market Deal of the  
Year (Premium) 2022

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Energy Law Firm of the  
Year 2021



**Ranked #1**  
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For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

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