

September 2023

## **Supreme Court interprets Regulation 39(1A) of the CIRP Regulations to hold that prior modification/ amendment of resolution plans received does not bar the committee of creditors from taking recourse to a challenge mechanism to enable resolution applicants to improve/ better their plans**

On August 25, 2023, the Supreme Court of India (“**Supreme Court**”) in the case of *Vizag Minerals and Logistics Pvt. Ltd. vs. Ravi Shankar Devarakonda & Ors*<sup>1</sup>, while dismissing the civil appeal filed by Vizag Minerals and Logistics Pvt. Ltd. (unsuccessful resolution applicant), has clarified that Regulation 39(1A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) does not bar the committee of creditors of Meenakshi Energy Limited to adopt a challenge process/mechanism for value maximisation even after resolution plans have been modified/ amended. In doing so, the Supreme Court has upheld the order dated June 27, 2023 in the case of *Consortium of Prudent ARC Ltd. vs. Mr. Ravi Shankar Devarakonda & Ors*<sup>2</sup> (“**Impugned Order**”) passed by National Company Law Appellate Tribunal, Chennai (“**NCLAT**”).

### **Brief Facts**

Please refer to our [JSA Prism of July 31, 2023](#) detailing the brief facts, issues and analysis/rationale of the Impugned Order. The Impugned Order was challenged by a member of the prospective resolution application *vide* civil appeal before the Supreme Court.

### **Findings of the Supreme Court**

The Supreme Court *vide* its order dated August 25, 2023, has upheld the Impugned Order by agreeing with NCLAT’s findings in the Impugned Order. Supreme Court has interpreted Regulation 39(1A) of the CIRP Regulations to hold that, the word ‘or’ in Regulation 39(1A) of CIRP Regulations has to be read as ‘*in addition to*’ and not ‘*to the exclusion of*’. Accordingly, the Supreme Court has clarified that the resolution professional may, if envisaged in the request of the resolution plan, allow modification of the resolution plan received, but only once. This, however, will not bar the Committee of Creditors to take recourse to a challenge mechanism to enable resolution applicants to improve/better their plans.

<sup>1</sup> Civil Appeal (Diary) Nos 27746 of 2023

<sup>2</sup> (2023) SCC OnLine NCLAT 287

## Conclusion

The Supreme Court has brought much needed clarity to Regulation 39(1A) CIRP Regulations by clarifying that the word 'or' is not used disjunctively to prevent the committee of creditors from undertaking a challenge process even after seeking amendments/ modifications to resolution plans. Prior to this judgment, the conundrum faced by the resolution professionals and committee of creditors with regards to the issue was whether both processes envisaged under Regulation 39(1A) of CIRP Regulations can be adopted by the stakeholders for value maximisation and if so, in what circumstances. This Judgment provides much needed clarity on this and aids in achieving the objective of the Insolvency and Bankruptcy Code, 2016 which is value maximization of the corporate debtor.

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