JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd.

Supreme Court decision

The NCLAT, by the impugned judgment, is not correct in refusing to go into whether the trade union would come within the definition of "person" under Section 3(23) of the Code. Equally, the NCLAT is not correct in stating that a trade union would not be an operational creditor as no services are rendered by the trade union to the corporate debtor. What is clear is that the trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debts owed for services rendered by each individual workman, who are collectively represented by the trade union. Equally, to state that for each workman there will be a separate cause of action, a separate claim, and a separate date of default would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with authority from several workmen to one of them to file such petition on behalf of all. For all these reasons, we allow the appeal and set aside the judgment of the NCLAT. The matter is now remanded to the NCLAT who will decide the appeal on merits expeditiously as this matter has been pending for quite some time.

M/s. Macawber Beekay Pvt. Ltd. Vs. M/s. BGR Energy Systems Ltd. – NCLT Amaravati Bench

It held that it can be seen that an application under Section 9 of IBC is principally for taking the Corporate Debtor into CIRP which has become an insolvent. Failure of the Corporate Debtor discharging the debt is a pre-condition for initiation of CIRP against it. If there is an agreement for payment of interest on the debt, the same can be considered while allowing the claim for the principal amount. But when the Corporate Debtor discharges the debt, it would be showing that it is not an insolvent. Hence, declaring the Corporate Debtor as insolvent by ordering CIRP only because of the default in paying of interest which is not agreed upon, would be against the spirit of IBC. The Operational Creditor would nevertheless have the right to claim and recover interest if it is permitted under any other law, by moving an appropriate forum. NCLT does not decide the amount that is due to the Operational Creditor.

The only test to admit an application under section 7 IBC is whether a debt above the threshold limit is due and whether the Corporate Debtor has defaulted in repayment. When by the date of admission the operational debt in terms of Section 5(21), which does not include interest, stands discharged, **the interest alone which remains under the claim amount, does not qualify for an operational debt, for the default of which alone CIRP can be ordered.** NCLT is not a forum for recovery so as to decide the due amount. When admittedly the principal amount is paid, operational debt ceases to be in existence and consequently application under section 9 becomes invalid.

The Adjudicating Authority concluded that considering the clarity of the law which settled that an application under Section 9 of IBC cannot be maintained or continued for a mere claim of interest, this application is liable to be dismissed.

THG Publishing Pvt Ltd vs Deadline Advertising Pvt Ltd

- Tribunal firstly referred to Section 182 of the Indian Contract Act, 1872 and further observed that the Operational Creditor being the Principal was always under obligation to recover the money from the client and not from his agent unless the agent failed to perform his duties.
- Therefore, since the respondent performed in good faith, the agent could not be held liable for default on the part of client of the Operational Creditor.

Mr. Hemang Phophalia Vs. The Greater Bombay Co-Operative Bank Limited & Ors. [2019]

- **Issue:** Whether an application under Section 9 initiating CIRP against the Corporate Debtor is maintainable if the name of the Corporate Debtor is struck off from the register of ROC.
- **Held:** The Adjudicating Authority is of the view that the issue with regard to maintainability of the present Application against a struck off company needs to be examined first. As per Section 250 of the Companies Act, 2013, the company which is struck off has been given an exception by the Legislature to not to be treated as dissolved in two circumstances i.e.,
- (a) for the purpose of realising the amount due to the company and;
- (b) for the payment or discharge of the liabilities or obligations of the company.

Next Education India Pvt. Ltd vs K12 Techno Services Pvt Ltd

The Appellant – M/s. Next Education India Pvt. Ltd. ('Operational Creditor') filed an application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016' (for short, 'the I&B Code') against M/s. K12Techno Services Private Limited (Corporate Debtor), the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by impugned order dated 20th December, 2018 rejected the application on the ground of 'existence of dispute'.

The Appellant brought on record (Form 5) of 'debt' and 'default'. It is also brought on record the Demand Notice u/s 8(1) of the 'I&B Code' was issued on 8th August, 2017. The Adjudicating Authority on the ground that the respondent has filed reply on 8th September, 2017 to the Demand Notice noticed that several disputes had been raised. They have also annexed several correspondence about the defective services provided by the Appellant. However, when we asked, the learned counsel for the Respondent could not lay hand on any of the correspondence to show that prior to Section 8 notice, the Respondent (Corporate Debtor) intimated that there were defective services provided by the Appellant.

It is a settled law that if any dispute is raised prior to the issuance of the invoices or Demand Notice u/s 8(1) of the I&B Code with regard to quality of service or goods or pendency of the suit or arbitration, in such case one may take the plea that there is an 'existence of dispute' but if any dispute is raised after issuance of Demand Notice u/s 8(1) that cannot be termed to be a 'preexisting dispute'.

We find that the Adjudicating Authority has failed to notice the aforesaid issue and observed that 'debt' in question is not only serious dispute but also barred by limitation and laches and not discussed under which provision the 'Master Service Agreement' with 'Sri Gowtham Academy of General and Technical Education' was consequentially issued on 8th February, 2016 and the reply to the Demand Notice was issued on 8th August, 2017.

For the reasons aforesaid, we set aside the impugned order dated 20th December, 2018 and remit the case to the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench for admitting the application u/s 9 of the 'I&B Code' after notice to the 'Corporate Debtor'. We allow the 'Corporate Debtor' to settle the claim before its admission, if it so chooses.

JUGEMENTS ON

SECTION 12

CoC of Essar Steel India Ltd. Vs. Satish Kumar Gupta

- The Hon'ble Supreme Court struck down the word 'mandatorily ' from Section 12 of the IBC. Section 12 posed a requirement to finish a CIRP compulsorily in a certain number of days, which the court found to be violative of Articles 14 and 19 of the Constitution of India. The effect of this declaration was that ordinarily the time taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, if the delay is attributable to the NCLT and/or the NCLAT itself, the time could be extended beyond 330 days in exceptional cases.

Prowess International Pvt. Ltd. v. Parker Hannifin India Pvt. Ltd.

- **Issue:** Whether a resolution process can be completed before the maximum period prescribed
- **Judgment:** The NCLAT held that, "in case(s) where all creditors have been satisfied and there is no default with any other creditor, the formality of submission of resolution plan under section 30 or its approval under section 31 is required to be expedited on the basis of plan if prepared. In such case, the Adjudicating Authority without waiting for 180 days of resolution process, may approve resolution plan under section 31, after recording its satisfaction that all creditors have been paid/ satisfied and any other creditor do not claim any amount in absence of default and required to close the Insolvency Resolution Process. On the other hand, in case the Adjudicating Authority do not approve resolution plan, will proceed in accordance with law."

Quantum Limited v. Indus Finance Corporation Limited

- **Issue:** whether the application for extension of the time period under Section 12 filed after the expiry of 180 days can be granted?
- **Judgment:** It was held by the NCLAT, New Delhi, that there is no provision stipulating that application for the extension of time period be filed within 180 days, including the last day that is the 180th day. The CoC instructs the resolution professional to file an application for such extension, the Adjudication Authority in the interest of justice and to ensure that the resolution process is completed following all the procedures, time should be granted by the Adjudicating Authority who is empowered to extend such period up to 90 days beyond 180th day.

Quinn Logistics India Pvt. Ltd. v. Mack Soft-Tech Pvt. Ltd.

- In this 2018 case, the exception was carved out regarding exclusion of certain periods from the counting of the total period of 270 days of resolution process due to some occurrence of unforeseen circumstances or if the facts and circumstances justify exclusion. The exceptions mentioned under orders are:
- If the corporate insolvency resolution process is stayed by a court of law or the Adjudicating Authority or the Appellate Tribunal, or the Hon'ble Supreme Court.
- If no 'Resolution Professional' is functioning for one or another reason during the corporate insolvency resolution process, such as removal.
- The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.

- On hearing a case, if an order is reserved by the Adjudicating Authority, the Appellate Tribunal, or the Hon'ble Supreme Court, finally pass an order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.
- If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court, and the corporate insolvency resolution process is restored.
- Any other circumstances which justify the exclusion of a certain period. However, excluding the period, if a further period is allowed, then the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code.

JUGEMENTS ON

SECTION 12A

Maharasthra Seamless Limited Vs. Padmanabhan Venkatesh & Ors

- Hon'ble Supreme Court held that Maharasthra Seamless Limited cannot withdraw from the proceeding in the manner they have approached this Court.
- The exit route prescribed in Section 12A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking Sections 7, 9 and 10 of the code.

Brilliant Alloys Private Limited Vs. Mr. S. Rajagopal & Ors

- The Division Bench of the Hon'ble Supreme court heard this petition and observed that the reason why the NCLT did not allow the withdrawal of such application because it was solely dependent on the Regulation 30 A Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which specifically state that an application for withdrawal can be filed by IRP or RP before the issue of expression of interest.
- The Hon'ble Supreme Court held that according to them, this regulation of IBBI has to read along with Section 12A of the IBC Code which specifically provides power to Adjudicating Authority to allow such withdrawal of the application if the Committee of Creditors approves it. Further, this Section does not contain any such stipulations, and the stipulation under 30 A of IBBI Regulation can only be construed as a directory which varies from case to case.

Swiss Ribbons & Anr. Vs. UOI & Ors.

- Section 12A now derails the settlement process by requiring the approval of at least ninety per cent of the voting share of the committee of creditors. Unbridled and uncanalized power is given to the committee of creditors to reject legitimate settlements entered into between creditors and the corporate debtors.
- The SC held that, "As all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy. Also, it is clear, that under Section 60 of the Code, the committee of creditors do not have the last word on the subject.

- If the committee of creditors arbitrarily rejects a just settlement and/or withdrawal claim, the NCLT, and thereafter, the NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12A also passes constitutional muster."

JUGEMENTS ON

SECTION 14

Diamond Engineering Pvt. Ltd ("Company") vs. M/S Shah Brother Ispat Pvt. Ltd.

- The purpose of the moratorium, according to the Hon'ble Supreme Court, is to "shape a scheme that protects the corporate debtor from pecuniary attacks against it during the moratorium period so that the corporate debtor gets breathing room to proceed as a going concern in order to eventually rehabilitate itself." i.e., the moratorium protects the corporate debtor by putting a stop to several concurrent proceedings and allowing the corporate debtor to maximise the value of the business without being burdened by additional debts.
- Furthermore, the legislative purpose behind enacting the moratorium clause was to prevent the government from terminating or suspending several grants, such as licences, permits, quotas, and concessions, because these grants are critical to a company's activity and maximising its value as a going concern.

SSMP Industries Ltd vs. Perkan Food Processors Pvt Ltd.

- The Court framed the question it sought to answer in the following terms - “whether the adjudication of the counter claim would be liable to be stayed in view of Section 14 of the Code.”
- Subsequently, it was held that the case to determine counter-claim of the respondent cannot be stayed under section 14 as it does not affect the assets of corporate debtor.

Power Grid Corporation Of India Ltd Vs. Jyoti Structures Ltd.

- The HC has interpreted "*proceedings*" "*including*" and "*against the corporate debtor*" used under Section 14 as under:
- (i) '***proceedings***' under Sec. 14(1)(a) do not mean 'all proceedings';
  (ii) the term '***proceeding***' would be restricted to the nature of action that follows it i.e. debt recovery action against assets of the corporate debtor;
  (iii) the use of narrower term '***against the corporate debtor***' in section 14(1)(a) as opposed to the wider phase '***by or against the corporate debtor***' used in section 33(5) of the code further makes it evident that section 14(1)(a) is intended to have restrictive meaning and applicability.
  (iv) term '***including***' is clarificatory of the scope and ambit of the term '***proceedings***'

Asis Global Ltd. v. Dy. Commissioner of State Tax

- Background: The present Interlocutory Application had been filed by the Liquidator against Respondent Dy. Commissioner of State Tax (Respondent No. 1) and Axis Bank Limited (Respondent No. 2) seeking direction from this Tribunal to unfreeze/ lift the attachment on the Bank Account of the Corporate Debtor maintained by Axis BankThe applicant vides it's a letter dated 27.02.2020 had communicated to the Axis bank about the initiation of the CIRP of the Corporate Debtor. The applicant had also vide letter dated 27.02.2020 requested the Axis Bank to remove the attachment/lien marked on the said Bank Accounts.
- Findings of the Bench: In relation to violation of section 14, The Bench noted that the Applicant has appraised the officials of Respondent No. 1 and 2. The Bench had no doubt in its mind that the attachment is violative of Section 14 of the Code and thus needs to be lifted.

JUGEMENTS ON

SECTION 18

ARC vs Bishal Jaiswal

- The Supreme Court clarified that entries in a Balance sheet do indeed amount to acknowledgement of debt for the purpose of extending the limitation period under Section 18 of the Limitation Act. It had been unnecessarily made complex by conflicting judgments of the NCLAT.
- The Court has finally clarified which factors are needed to be necessarily undertaken to confirm whether an entry in the Balance Sheet can be seen as an acknowledgment under Section 18 of the Limitation Act.
- One of the factors was whether or not the entries in the balance sheet are accompanied by a caveat regarding it being an acknowledgment of debt. If so, then it would require an analysis by a court or tribunal of the factual matrix of the particular case in order to arrive at a conclusion regarding the applicability of Section 18 of the Limitation Act.
- This is beneficial in the sense that it provides a level playing field to the debtors and creditors, because making repayments as per timeline is not always possible, thus emerges the concept of acknowledgment of debt.

JUGEMENTS ON

SECTION 21

Phoenix Arc Private Limited v. Spade Financial Services Limited

- The Supreme Court held that in case the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC and sabotaging the CIRP, the first proviso to Section 21(2) will be applicable.

JUDGEMENT ON

RIGHTS OF SUSPENDED BOARD OF DIRECTORS

VIJAY KUMAR JAIN VS STANDARD CHARTERED BANK (SC)

RIGHTS OF SUSPENDED BOARD OF DIRECTORS

- The appellant submitted that as per Section 24(3) of IBC, RP has to give notice to the members of suspended Board of Directors for participating in the CoC meetings. Under Regulation 21 of CIRP Regulations 2016, the notice of these meetings shall not only contain an agenda of the meetings but shall also contain copies of all documents relevant to the matters to be discussed. Since an approved resolution plan is binding on the erstwhile directors under Section 31(1) IBC, they have a vital stake in the issue, and some of them may have offered personal guarantee for the corporate debtor. Therefore, the appellant argued for the right to access resolution plans.
- Considering the arguments, the bench ruled in favor of the appellant. It observed that the statutory scheme of IBC and CIRP Regulations made it clear that "though the erstwhile Board of Directors are not members of the committee of creditors, yet, they have a right to participate in each and every meeting held by the committee of creditors, and also have a right to discuss along with members of the committee of creditors all resolution plans that are presented at such meetings under Section 25(2)(i)".

- The Court also noted that every participant is entitled to a notice of every meeting of the committee of creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii).
- "Obviously, resolution plans are "matters to be discussed" at such meetings, and the erstwhile Board of Directors are "participants" who will discuss these issues. The expression "documents" is a wide expression which would certainly include resolution plans", held the judgment authored by Justice Nariman.
- The judgment went on to hold : "Therefore, a combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the committee of creditors, must be given a copy of such plans as part of "documents" that have to be furnished along with the notice of such meetings”

JUGEMENTS ON

SECTION 29A

Arun Kumar Jagatramka v. Jindal Steel and Power Ltd. & Anr.

- The Supreme Court , observed that Section 29A of the IBC has been enacted keeping in mind the larger public interest and to facilitate effective corporate governance. Section 29A rectifies a loophole in the IBC, which allowed backdoor entry to the erstwhile management of corporate debtors into corporate insolvency resolution process.
- It was further held that, held that courts should adopt a purposive interpretation of Section 29A of the IBC, which acts as a vital link in ensuring that the objects of the IBC are not defeated by allowing the management (who have run the company aground) to return to the corporate debtor as resolution applicants.

Arcelor Mittal Private Ltd. Vs. Satish Kumar Gupta

- It was held that, The expression “control”, in Section 29A(c), denotes only positive control, which means that the mere power to block special resolutions of a company cannot amount to control. “Control” here, as contrasted with “management”, means de facto control of actual management or policy decisions that can be or are taken.
- 29A (f) – if a person is prohibited by a regulator of the securities market in a foreign country from trading in securities or accessing the securities market, the disability under sub-clause (i) would attach.