APRIL 2024

THE INSOLVENCY PROFESSIONAL

Your Insight Journal

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a Section 8 Company incorporated under the Companies Act-2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhering to fair, just and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy Code to Insolvency Professionals by conducting round tables, webinars and sending daily newsletter namely “IBC Au courant” which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

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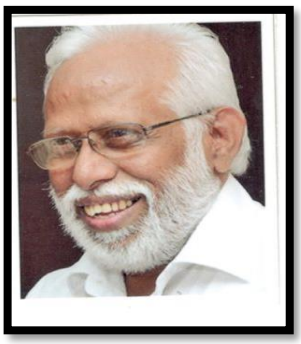

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MESSAGE FROM THE DESK OF MANAGING DIRECTOR

Dear reader,

We are at that time of the year when priority is to complete all the compliances and closures that need to be completed for the financial year that has just ended. I am sure many of you would have. been preoccupied with this activity this month. Please let me wish you continued excellence in your chosen profession and success in your assignments and your professional career as the year progresses.

The profession of IPs, being still in infancy, is continuously evolving with numerous court rulings apart from regulatory changes and hence demands a high level of attention of IPs in the midst of assignments and related preoccupations.

Professional development happens through continuous professional education including updates on changes in code and relevant laws and regulations as also new case laws. The equally important side of professional development is expression of a professional's knowledge and experience and competent sharing with fellow IPs. It should not be just the credit of mandatory Continuous Professional Education (CPE) that should drive us to attend knowledge and skill upgrade programs and contributing to our journal, but the professional strength we gain and the satisfaction we earn by participating in and conducting these programs, that shall drive us to be active participants in professional development activities.

At IPA-ICAI, we strive to make our publications relevant, informative, interesting, and lucid. This issue of the Insolvency Professional – Your Insight Journal' has interesting articles on

- The recent Supreme Court ruling that has enabled land-owning creditors like state agencies in the real estate domain to be classified as secured creditors.
- Reopening of the debate on the discretion available to the Adjudicating Authority while considering CIRP applications under section 7 of IBC and.
- All aspects regarding forensic audit involving treatment of avoidance transactions.

I welcome your comments, observations, and critique on the published articles in this journal Your response will contribute to better understanding of the issues in the articles as also better appreciation of different perspectives. Also, I welcome you to contribute with your updates that would help our fellow IPs and opinions from your experiences that all of us can benefit from.

Wish you all happy reading.

Managing Director
Mr. G.S. Narasimha Prasad

PROFESSIONAL DEVELOPMENT INTIATIVES

EVENTS

April 2024	
Date	**Events**
07th -April-2024	**Workshop on Interface of different Laws with IBC, 2016."** was conducted on 07th April 2024, with content like, Interface of Tax Laws with IBC 2016, Interface of foreign exchange Laws with IBC 2016, Interface of company laws with IBC 2016, Interface of Competition Law with IBC 2016
12th -13th April 2024	Learning Session on "Cross Border Insolvency & Group Insolvency "was held on 12th and 13th April 2024 and content included topics such as Concept of Groups in different Laws and Jurisdictions, Rationale and Advantages of Group Insolvency, Procedural and Substantive Consolidation, International frameworks and best Practices, Concept of Cross Border Insolvency, Scope of Cross Border Insolvency-UNICTRAL, etc.
19th April 2024	Workshop on "Improving IBC outcomes" (Key Imperatives for IPs & RVs was conducted on 19th April 2024 which received an overwhelming response from participants who benefitted from the knowledge sharing workshop.

IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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Our Daily Newsletter which keeps the Insolvency Professionals updated with the news on Insolvency and Bankruptcy Code

ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

PREFERENTIAL, UNDERVALUED, FRAUDULENT AND EXTORTIONATE (PUFE) TRANSACTIONS UNDER INSOLVENCY AND BANKRUPTCY CODE 2016 - PROVISIONS & DUTIES / ROLE OF RESOLUTION PROFESSIONAL (RP)

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Qualified Independent Director, Commerce & Law Graduate.

As per Insolvency and Bankruptcy Code 2016 ("IBC") there are four types of transactions i.e. Preferential, Undervalued, Fraudulent and Extortionate also called as Avoidance and / or Vulnerable transactions. IBC , provides for avoidance of preferential (Sections 43 and 44), undervalued (Section 45 to 48), extortionate (Sections 50 and 51) and fraudulent (Section 49 and 66) transactions and the intention of legislature behind enacting such provisions is that fraudulent transactions are avoided so that such assets would be available either with the IRP or with the liquidator, as the case may be, to put the corporate debtor back on its revival path as a going concern or if that is not possible, to ensure that the creditors of the corporate debtor get a transparent deal. It also ensures that a particular creditor is not placed in a beneficial position vis-à-vis the other creditors. IBC 2016 also casts duty upon Resolution Professional under Section 25(2) (j) file application for avoidance of transactions in accordance with Chapter III, if any and Section 35 casts duty of the liquidator (l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions. This Article aims to provide insight to PUFE transactions at a glance which can help the reader as a ready reckoner for reference purposes.

Introduction:

The Insolvency and Bankruptcy Code of India 2016 **("IBC")** and the IBBI (Insolvency Process for Corporate Persons) Regulations of 2016 **("CIRP Regulations"**) have made elaborate provisions for Preferential, Undervalued, Fraudulent and Extortionate **("PUFE transactions").** To identify and inquire into these transactions and file applications for their avoidance, the Resolution Professional / liquidator as the case may be has been assigned a duty under Sections 25(2) (j) and 35(l) of IBC. Further, for setting aside undervalued transactions, an application may also be filed by a creditor under Section 47. In the IBC Eco-System although no separate definitions of PUFE transactions have been provided but the Sections dealing with such transactions are self-contained , which incorporates and includes various terms of immense relevance which shall be explained in this Article.

Notifications & Recommendations of Insolvency Law Committee:

The legislation after recommendation by the Joint Parliament Committee passed by Lok Sabha on 5.5.2016 and by Rajya Sabha on 12.5.2016 and assented by the President on 28.5.2016 and known as the Insolvency and Bankruptcy, Code 2016 (31of 2016 dated 25.5.2016) which has been amended from time to time. Further as per Various Notifications the provisions of various sections have been notified from time to time. **The provisions related to PUFE transactions have been notified vide 2 Notifications (I) Section 26 in respect of Application for avoidance of transactions not to affect proceedings , Section 66 in respect of Fraudulent trading or wrongful trading , Section 67 in respect of Proceedings under section 66 was notified vide Notification S.O. 3594 (E) dated 30.11.2016 enforceable w.e.f. 1-12-2016 and (II) Section 43 to 56 relating to Preferential transactions & order, Avoidance of undervalued transactions, Relevant period & order, Transactions defrauding creditors, Extortionate credit transactions, order were Notified vide S.O.3867 (E) dated 9-12-2016 enforceable w.e.f. 15-12-2016 .**

The Government of India constituted an Insolvency Law Committee **("ILC")** on 16th November 2017 to make recommendations to the Government on issues arising from the implementation of the IBC as well as on the recommendations received from various stakeholders. The Committee reviews various aspects of IBC in its reports which are considered by the Parliament and recommend for legislative changes and considering the reports and Judgments, the legislations has been amended from time to time to bring the provisions of IBC in line with. ILC in its 5th report of May 2022, deliberated on the issue which was highlighted **in the matter of Venus Recruiters Private Limited vs. Union of India & Ors** and keeping in view the intent of Section 26 of IBC, the ILC suggested that proceedings related to PUFE transactions should be considered independent of the CIRP. Accordingly, the Committee concluded that proceedings in respect of PUFE transactions may continue beyond the timeline.

Further, in line with the suggestion of the ILC, Regulation 38(2) (d) was inserted to the CIRP Regulations vide Notification No. IBBI/2022-23/GN/REG 084, dt. 14.06.2022, w.e.f.14.06.2022. Inserted as (d) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.

However, given that the CIRP of a corporate Debtor has to be mandatorily concluded within a period of 330 days (including all extensions from the date of admission into CIRP), coupled with the delay that commonly occurs in disposal of applications in relation to avoidance of PUFE

transactions in relation to a corporate debtor often remains unadjudicated by the time the CIRP of such corporate debtor is concluded.

As a result, applications for avoidance of PUFE transactions were considered infructuous upon conclusion of the CIRP. This issue was highlighted in the matter of Venus Recruiters Private Limited vs. Union of India & Ors. The Division Bench of Delhi High Court on January 13, 2023, now titled as IN THE MATTER OF: LPA 37/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021 Tata Steel BSL Limited Versus Venus Recruiter Private Limited & Ors has finally decided the fate of avoidance/preferential/undervalued applications filed under the Insolvency and Bankruptcy Code, 2016 based on the Venus Recruiters Private Limited & v Union of India & Ors case. **The Division Bench held that avoidance/preferential transactions can survive beyond the conclusion of corporate insolvency resolution process ("CIRP") and that the Resolution Professional ("RP") will not be functus officio for perusing the avoidance applications and can continue to pursue such applications.**

Relevant Provisions / Sections in respect of Duties of Resolution Professional / Liquidator & PUFE transactions under IBC at a glance - Part II Corporate Insolvency Process of Chapter II. Provides the relevant Sections in dealing with such transactions IBC, provides for avoidance of preferential (Sections 43 and 44), undervalued (Section 45 to 48), extortionate (Sections 50 and 51) and fraudulent (Section 49 and 66) transactions.

Quote

Section 25: Duties of resolution professional.

25(2) (j) (j) file application for avoidance of transactions in accordance with Chapter III, if any

Section 26: Application for avoidance of transactions not to affect proceedings.

26. The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.

Section 35: Powers and duties of liquidator.

35(l) (I) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions.

Section 43: Preferential transactions and relevant time.

43. (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the **corporate debtor has at a relevant time** given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be **deemed to have given a preference,** if—

(a) there is a **transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor**; and

(b) the transfer under clause **(a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53**.

(3) For the purposes of sub-section (2), **a preference shall not include** the following transfer —

(a) transfer made in the **ordinary course of the business** or financial affairs of the corporate debtor or the transferee.

(b**) any transfer creating a security interest in property** acquired by the corporate debtor to the extent that—

(i) such **security interest secures new value** and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

(ii) **such transfer was registered with an information utility on or before thirty days** after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation.—For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not

include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a **relevant time**, if—

(a) it is given to a **related party** (other than by reason only of being an employee), **during the period of two years preceding the insolvency commencement date; or**

(b) a preference is given to a person **other than a related party during the period of one year preceding the insolvency commencement date.**

Section 44: Orders in case of preferential transactions.

44. The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, **by an order**:

(a) **require any property transferred** in connection with the giving of the preference to be vested in the corporate debtor.

(b) **require any property to be so vested** if it represents the application either of the proceeds of sale of property so transferred or of money so transferred.

(c) **release or discharge (in whole or in part) of any security interest** created by the corporate debtor.

(d) **require any person to pay such sums in respect of benefits received by him from the corporate debtor**, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct.

(e) **direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference**, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate.

(f) **direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order**, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) **direct for providing the extent to which any person whose property is so vested in the corporate debtor,** or on whom financial debts or operational debts are imposed by the order, are

to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that **an order** under this section **shall not**—

(a) **affect any interest in property which was acquired from a person other than the corporate debtor,** or any interest derived from such interest and **was acquired in good faith and for value;**

(b) require a person, who received **a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.**

Explanation I.—For the purpose of this section, **it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, —**

(i) **had sufficient information of the initiation or commencement of insolvency resolution process** of the corporate debtor.

(ii) **is a related party**,;

It shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation II.—A person shall be deemed to have **sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.**

Section 45: Avoidance of undervalued transactions.

45. (1) If the **liquidator or the resolution professional**, as the case may be, on an **examination of the transactions** of the corporate debtor referred to in **sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.**

(2) A transaction shall be considered **undervalued where the corporate debtor**—

(a) makes a **gift to a person**; or

(b) **enters into a transaction** with a person **which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,** and such transaction **has not taken place in the ordinary course of business** of the corporate debtor.

Section 46: Relevant period for avoidable transactions.

46. (1) In an **application for avoiding a transaction at undervalue**, the liquidator or the resolution professional, as the case may be, **shall demonstrate that—**

(i) such transaction was **made with any person within the period of one year preceding the insolvency commencement date; or**

(ii) such transaction was made **with a related party within the period of two years preceding the insolvency commencement date.**

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

Section 47: Application by creditor in cases of undervalued transactions.

47. (1) Where an **undervalued transaction has taken place** and **the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor**, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

(2) Where the Adjudicating Authority, after examination of the application made under sub-section (1), **is satisfied that—**

(a) undervalued transactions had occurred; and

(b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order—

(a) **restoring the position as it existed before such transactions** and reversing the effects thereof in the **manner as laid down in section 45 and section 48;**

(b) **requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.**

Section 48: Order in cases of undervalued transactions.

48. The order of the Adjudicating Authority under sub-section (1) of section 45 may provide for the following: —

(a) **require any property transferred as part of the transaction, to be vested** in the corporate debtor.

(b) **release or discharge (in whole or in part) any security interest granted by the corporate debtor**;

(c) **require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be**, as the Adjudicating Authority may direct; or

(d) **require the payment of such consideration for the transaction as may be determined by an independent expert.**

Section 49: Transactions defrauding creditors.

49. Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the **Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—**

(a) **for keeping assets** of the corporate debtor **beyond the reach of any person who is entitled to make a claim against the corporate debtor; or**

(b) **in order to adversely affect the interests of such a person in relation to the claim**,

the Adjudicating Authority shall make an **order—**

(i) **restoring the position as it existed before such transaction as if the transaction had not been entered i**nto; and

(ii) **protecting the interests of persons who are victims of such transactions**:

Provided that an order under this section—

(a**) shall not affect any interest in property** which was **acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and**

(b) **shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.**

Section 50: Extortionate credit transactions.

*__50.__ (1) Where the corporate debtor has been a party to an extortionate credit transaction involving the **receipt of financial or operational debt during the period within two years preceding the insolvency commencement date,** the liquidator or the resolution professional as the case may be, may **make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.**

(2) The Board may specify the circumstances in which a transactions which shall be covered under sub-section (1).

Explanation. —For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

Section 51: Orders of Adjudicating Authority in respect of extortionate credit transactions.

51. Where the Adjudicating Authority after examining the application made under sub-section (1) of section 50 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, **it shall, by an order—**

(a) **restore the position** as it existed prior to such transaction.

(b) **set aside the whole or part of the debt created on account** of the extortionate credit transaction.

(c) **modify the terms** of the transaction.

(d**) require any person who is, or was, a party to the transaction to repay any amount** received by such person; or

(e) **require any security interest that was created as part of the extortionate credit transaction to be relinquished** in favor of the liquidator or the resolution professional, as the case may be.

Section 66: Fraudulent trading or wrongful trading.

66. (1) If during the corporate insolvency resolution process or a liquidation process, it is **found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose**, the Adjudicating Authority may on the application of the resolution professional **pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.**

(2) On an application made by a resolution professional during the corporate insolvency resolution process, **the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—**

(a) **before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process** in respect of such corporate debtor; and

(b) **such director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor.**

[(3) Notwithstanding anything contained in this section, **no application shall be filed by a resolution professional under sub- section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A**

Explanation. —For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

Section 67: Proceedings under section 66.

67. (1) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the **Adjudicating Authority may—**

(a) **provide for the liability of any person** under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor **held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and**

(b) **from time to time, make such further directions** as may be necessary for enforcing any charge imposed under this section.

Explanation.—For the purposes of this section, "assignee" includes a person to whom or in whose favor, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the directions have been made.

(2) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, in relation to a person who is a creditor the corporate debtor, **it may, by an order, direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in the order of priority of payment under section 53 after all other debts owed by the corporate debtor.**

Section 67A: Fraudulent management of corporate debtor during pre-packaged insolvency resolution process.

67A. On and after the pre-packaged insolvency commencement date, where an officer of the corporate debtor manages its affairs with the intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may, on an application by the resolution professional, pass an order imposing upon any such officer, a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

CIRP Regulations at a glance in reference to PUFE Transactions:

Quote

Regulation 5: Extortionate credit transaction.

5. A transaction shall be considered extortionate under section 50(2) where the terms:

(1) require the corporate debtor to make exorbitant payments in respect of the credit provided; or

(2) are unconscionable under the principles of law relating to contracts.

Regulation 35A: Preferential and other transactions

35A. (1**) On or before the seventy-fifth day of the insolvency commencement date**, **the resolution professional shall form an opinion** whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, **he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date**

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.

(3A) The resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated.

(4) The creditors shall provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc.

Regulation 38: Mandatory contents of the resolution plan.

(2) A resolution plan shall provide:

#(d) **provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:**

Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.]

#inserted by IBBI (CIRP) (Second Amendment) Regulations, 2022 vide Notification No. IBBI/2022-23/GN/REG084 dated 14th June 2022, w.e.f. 14.06.2022.

Regulation 39: Approval of resolution plan.

39 (2) The resolution professional **shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found, or determined by him**: -

(a) preferential transactions under section 43;

(b) undervalued transactions under section 45;

(c) extortionate credit transactions under section 50; and

(d) fraudulent transactions under section 66,

and the orders, if any, of the adjudicating authority in respect of such transactions.

Summary of PUFE Sections & CIRP Regulations under IBC 2016.

It is important to take a note that landmark Judgment of the Hon'ble Supreme Court of India in the matter of Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited Etc. Etc. [Civil Appeal Nos. 8512-8527 of 2019 and other petitions] dated 26th February 2020 the Hon'ble Supreme Court settled several issues related to Preferential transactions, Look Back Period, Duties, and responsibilities of RP, Undervalued and fraudulent transactions.

Section 25 (2) (j) Duties of resolution professional, casts an important duty on Resolution Professional (RP) - file application for avoidance of transactions in accordance with Chapter III, if any. This is to be read with Regulation 35 A which casts a duty on RP and, the RP is required to form an opinion on avoidable transactions on or before the 75th day of the commencement of the corporate insolvency resolution period, to decide on such transactions on or before the 115th day, and to file an application with the adjudicating authority on or before the 135th day of the beginning of the insolvency resolution period.

Section 26 provides that application for avoidance of transaction is not to affect CIRP. Thus, avoidance applications can continue even post completion of CIRP.

Section 35(l) provides Powers and duties of liquidator to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions.

Section 43 regulates preferential transactions and their relevant time. Under subsection (1) of Section 43, if the liquidator or the resolution professional forms an opinion that the corporate debtor has granted a preference to any person as mentioned in subsection (4), during a relevant time and in the manner specified in subsection (2), they are required to apply to the Adjudicating Authority for the avoidance of preferential transactions. Section 43, which deal with the duties and responsibilities of the resolution professional in examining and reporting on preferential and other transactions observed during the insolvency resolution process and the **issuance of relevant orders under Section 44.**

Section 45 regulates Undervalued transactions and in general parlance, the amount fetched is significantly less than the amount provided by the corporate debtor then this type of transaction is known as an undervalued transaction. And, when a resolution professional or liquidator comes across such a transaction, then as the case, must file an application with the tribunal to have the transaction declared null and void and the effect reversed.

Section 46 talks about relevant period for undervalued transactions, any transaction in the ordinary course of business of the corporate debtor would not amount to an undervalued transaction, just as it would not amount to an undervalued transaction in the case of preferential transactions. The undervalued and preferred deals have the same "look-back" time and accordingly, the guidance issued by the Supreme Court in the case of Jaypee Infratech on these aspects would apply in the context of undervalued transactions as well.

Section 47 is about a situation, where an undervalued transaction under section 45 has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this section. This section has far reaching effect as the AA may pass an order **requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be. Resolution Professional or the Liquidator as the case may be have to be very much careful in reporting such transactions under Section 45 itself and Section 48** provides about the orders of AA under such transactions.

Section 49 details **about transactions made by a corporate debtor**, defrauding the creditors with the intent of putting the corporate debtor's assets beyond the reach of creditors or otherwise prejudicing the interests of the person making a claim against the corporate debtor or who may make a claim against the corporate debtor in the near future. One of the important features of this Section is that it differs from section 43 and section 46 in regard to look back period as there is no time limit for contesting the transaction before the Tribunal.

Section 50 read with Regulation 5(2) refers to something that is excessive, extreme, or severe. It is if the corporate debtor receives a credit facility with an excessive rate of interest or unfair credit terms, such as a punitive default clause, or if the debtor was in a vulnerable position at the time of the transaction and Section 51is regarding Orders of the Adjudicating Authority in respect of extortionate credit transactions.

Section 66, details about fraudulent trading or wrongful trading it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose. Transactions under Section 66 does not provide for a look-back period for the purpose of examining and declaring transactions executed by the corporate debtor as fraudulent. This is in contrast to the provisions of Sections 43 and 46 of the IBC which specify a look-back period. An observation to this effect was also recently made by the NCLT, Ahmedabad Bench in **Amit Patel v. Chandra Jain** on 16 February 2022. The Bench noted that there is no prescribed look-back period for transactions which are proposed to be termed as fraudulent under Section 66 of the IBC. Section 67 provides about proceedings under Section 66

Regulation 35 A spells the timelines on avoidance transactions. The report of the Insolvency Law Committee and amendment to regulation 35A dated 14.06.2022 & 16.09.2022 makes it clear that an avoidance application can be pending even beyond the submission of the resolution plan. The timelines under this regulation are directory and not mandatory in nature. Regulation 35A pertains merely to the RP discharging his statutory burden of filing an avoidance application within an outer limit of 135 days from the commencement of the CIRP.

Regulation 38 mandates that the Resolution Plan provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:

Regulation 39(2) of the IBBI Regulations deals with the approval of the resolution plan. It stipulates that the resolution professional is responsible for submitting all resolution plans that comply with the requirements of the IBC 2016 & CIRP Regulations.

Data of avoidance applications and disposal:

As per the quarterly newsletter of the Insolvency and bankruptcy Board of India for the October – December 2023 the Details of avoidance applications and disposal is as under:

Details of avoidance applications and disposal

(Amount in Rs. Crore)

Sl.	Nature of Transactions	Applications Filled		Applications Disposed		
		Number of Transactions	Amount Involved	Number of Transactios	Amount Involved	Amount Clawed Back
1	Preferential	160	15262.77	60	908.86	38.27
2	Undervalued	26	1031.96	5	362.42	5.77
3	Fraudulent	282	99036.98	49	2338.78	1048.62
4	Extortionate	4	75.65	1	0.09	-
5	Combination	634	223742.04	140	43735.51	5226.61*
Total		**1106**	**339149.40**	**255**	**47345.66**	**6319.27***

*In the matter of Jaypee Infra, possession of 758 acres out of total 858 acres of land was given back to the CD. The 858 acres of land was earlier valued at Rs. 5500 crores.

Conclusion:

Avoidance transactions are the transactions undertaken by the corporate debtor prior to the initiation of the Corporate Insolvency Resolution Process ('CIRP') to defraud its creditors or to benefit itself and his related parties. Sections Section 45 to 49 and 66 of the IBC and CIRP regulations regulate how preferential and fraudulent transactions are to be dealt for by the Resolution Professional / Liquidator and the Committee of Creditors during the CIRP. Keeping in view, the nuisance of PUFE transactions and as per the data hereinabove for the quarter October to December 2023 the number of transactions for which applications filed are 1106 and amount involved 339149.40 Crore against which applications disposed are mere 255 and amount involved 47345.66 Crore disposal rate for applications filed and applications disposed and the amount

involved in these transactions is alarming, this shows the enormous value that avoidance transactions hold, the recovery of which can substantiate the recoveries by creditors under the IBC. The Resolution Professional or Liquidator must recognize a situation and find solutions to prevent it so that creditors can pursue their claims.

The legislation on the recommendation of the Insolvency Law Committee has amended the IBC 2016 and CIRP regulations from time to time and various judicial pronouncements have also paved the path for disposal of such transactions.

In the past there was no provision regarding the restoration of avoidance transactions after the approval of the successful resolution plan. The landmark judgment of Tata Steel BSL Ltd. Vs. Venus Recruiter Private Ltd. & Ors provides foremost guidance on the context of avoidance transactions under the IBC. This judgment plays an important role in the remedy / restoration of avoidance transactions filed against the corporate debtor in the future.

References:

1. Insolvency and Bankruptcy Board of India (IBBI)
2. The Insolvency and Bankruptcy Code, 2016 & CIRP Regulations.
3. Reports of Insolvency Law Committee
4. Judicial pronouncements.

Resolving Corporate Insolvency in India: Unpacking the Complexities of Section 7 Admissions

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The current legal interpretation regarding the relationship between Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC') in the light of the recent Supreme Court decision in Vidarbha Industries Power Ltd. v. Axis Bank Ltd. ('Vidarbha') has introduced an element of discretion in determining default and admitting applications under Section 7 of the IBC. Notably, the impact of Vidarbha on the established jurisprudence remains unexplored and undecided by any Indian court to date. This paper is of academic relevance written from a practitioner's viewpoint, seeks to fill this research gap by examining the repercussions of Vidarbha Industries case. It refrains from criticizing the Vidarbha judgment and instead focuses on exploring the discretionary element in adjudicating Section 7 applications under the IBC. The paper analyzes how the Vidarbha ruling could affect the existing dynamics between insolvency law assuming that the Adjudicating Authority exercises discretion reasonably.

The Indian economy thrives on a dynamic business landscape. However, even the most robust companies can encounter financial difficulties. The Insolvency and Bankruptcy Code (IBC), enacted in 2016, serves as a crucial framework for resolving such insolvency issues. At the heart of this framework lies Section 7, which empowers financial creditors to initiate a structured Corporate Insolvency Resolution Process (CIRP) against defaulting companies. This process aims to revive the company or recover outstanding debts through a time-bound mechanism. Despite its central role, Section 7 admissions have emerged as a complex and often debated aspect of the IBC. The initial interpretation of this section created some ambiguity, leading to instances where courts delayed insolvency proceedings based on a company's perceived financial health. This inconsistency threatened to undermine the very purpose of the IBC - a swift and efficient resolution for corporate insolvency.

After Honourable Supreme Court judgment in **Vidarbha Industries**, there seems to have caused a lot of commotion and raised questions about the legal standing regarding discretionary admission of section 7 applications under the Insolvency and Bankruptcy Code, 2016 by the NCLT. Although subsequent judgments by the Supreme Court have attempted to alleviate this position, it is unclear what the specific legal standpoint would be for the NCLT as they consider Section 7 applications.

A. Statutory provisions of section 7 of IBC 2016

As per Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 a financial creditor can file an application with the following procedure.

a) *Initiating CIRP: A financial creditor can file an application with the Adjudicating Authority to initiate the Corporate Insolvency Resolution Process (CIRP) against a corporate debtor when a default on a financial debt has occurred [Section 7(1)].*
b) *Explanation: A default includes non-payment of a financial debt not only to the applicant but also to any other financial creditor of the corporate debtor [Section 7(1) Explanation].*
c) *Application Process: The application must be filed in the prescribed form and manner, along with the required fee [Section 7(2)]*

As per IBC, the financial creditors, initiating insolvency proceedings under Section 7 of the IBC seemed straightforward. All a financial creditor needed to prove was the existence of a debt and a default by the company.

Early interpretations of the Code by the Supreme Court established that once default was proven, the NCLT was obligated to initiate CIRP, as seen in cases like **Innoventive Industries Ltd. v. ICICI Bank** and **Swiss Ribbons (P) Ltd. v. Union of India**. The principle that demonstrating debt and default compels NCLT to trigger CIRP without discretion was reinforced by the Court in the *Swiss Ribbons* case. This underscores the evolving landscape of corporate finance and insolvency proceedings under the Code.

B. How Vidarbha Case came to Limelight

The issue of on following points which challenges the outcome of the NCLAT judgment. Broadly the SLP of Supreme Court have the following broad prayers.

a) ***Procedural Errors:*** *The appeal might allege that the NCLAT made procedural mistakes during the case, impacting the final decision.*
b) Factual Errors: *The appellant (party dissatisfied with NCLAT's order) might argue that the NCLAT misinterpreted factual evidence presented during the proceedings.*
c) ***Legal Errors:*** *The appeal could claim that the NCLAT applied the law incorrectly, resulting in an erroneous decision based on the IBC provisions.*
d) ***Denial of Natural Justice:*** *The appeal might allege that the NCLAT's proceedings violated the principles of natural justice, preventing a fair hearing.*

Under Section 7 of the Code, a *financial creditor needed to establish two key elements – the 'existence of debt' and 'default' to admit insolvency.* The Supreme Court altered this requirement by making the provision discretionary. This change was initiated in the Vidarbha Industries case, weakened the core of the Code, shifting towards a more party-driven insolvency resolution process. In the case of Vidarbha Industries Power Ltd., a company operating thermal power plants, it was awaiting a significant sum based on a favourable ruling from APTEL. However, Axis Bank filed a Section 7

application against the company for defaulting on a much smaller amount. The NCLT admitted the application based on the presence of debt and default, a decision upheld by the NCLAT. The Supreme Court, however, ruled in favor of Vidarbha Industries Power Ltd., stating that the mere existence of debt and default did not automatically warrant admission to the insolvency resolution process. The Court emphasized that the NCLT should consider various factors, including the feasibility of initiating insolvency proceedings. The discretionary nature of Section 7(5) of the Code allows the NCLT to exercise judgment in admitting or rejecting such applications, even in the presence of a default.

This shift stemmed from the case of Vidarbha Industries Power Ltd., which faced a Section 7 application from Axis Bank due to a defaulted debt of Rs. 553 crores. Despite lower courts approving the application, the Supreme Court allowed Vidarbha Industries' appeal. The Supreme court clarified that NCLT could now reject applications even if debt and default were established. This meant NCLT could analyse the circumstances surrounding the default and assess the feasibility of initiating insolvency proceedings. The Supreme Court's ruling is significant because it clarifies the power of the National Company Law Tribunal (NCLT) in handling insolvency cases under the Insolvency and Bankruptcy Code (IBC) as below.

NCLT has Discretion: *The NCLT now has the authority to reject applications for insolvency proceedings even if there's proven debt and default by the company. This gives them more flexibility in handling cases.*

Focus on Viability: *The purpose of the IBC is to revive struggling companies, not punish those facing temporary financial difficulties. The NCLT can now consider the company's overall financial health and the feasibility of a successful insolvency process before admitting an application.*

Different Rules for Different Creditors: *This ruling applies specifically to applications from financial creditors. The NCLT might still have less discretion when dealing with applications from operational creditors, where the existence of undisputed debt seems to hold more weight.*

This decision gives the NCLT a more nuanced approach to insolvency cases. It allows them to consider the bigger picture and prioritize reviving potentially viable companies. This Supreme Court judgment introduced a layer of complexity. The Supreme Court ruled that Section 7 admissions were no longer automatic, granting NCLT discretion to consider various factors before admitting an application. To some extent it helped the defaulting companies gained leverage to contest admission, potentially delaying the start of CIRP.

This new interpretation requires adjudicating authorities to carefully assess not only the default but also the circumstances surrounding it before admitting a Section 7 application. The Supreme Court's decision altered the absolute power of the adjudicating authority and established a new

legal precedent. The Vidarbha Industries case introduced ambiguity, slowing down the admission of applications related to financial debts. It also provided defaulting corporate debtors with a way to delay insolvency proceedings, undermining the Code's effectiveness in deterring borrowers from defaulting.

C. Statutory provisions IBC & BLRC Committee Report

IBC aims to revive struggling companies which should be a boon for them as per BLRC report. It allows creditors to initiate insolvency proceedings against debtors in default. The IBC was structured around key principles like creditor-in-possession, time-bound resolution processes, and a market-oriented approach to insolvency proceedings. A unique law IBC introduced a uniform insolvency resolution mechanism that applied to both corporate entities and individual debtors, providing a comprehensive framework for resolving insolvency issues. In tune with international benchmark, IBC proposed the establishment of an Insolvency Regulator tasked with supervising the insolvency ecosystem, including functions related to regulation, research, and accountability. New provisions added as the IBC envisioned the creation of specialized tribunals known as Adjudicating Authorities to handle insolvency cases efficiently and effectively.

IBC Section 7 is crucial for resolving corporate insolvency in India. It empowers financial creditors to initiate a structured process for recovering debts from defaulting companies. Need for Stability: Consistent court interpretations of Section 7 and the IBC are essential for a thriving Indian business environment. While recent rulings provide some clarity, a definitive judgment from the Supreme Court or Parliament might be necessary. The Insolvency and Bankruptcy Code, 2016 (the Code) has emerged as a pivotal legislation in India over the past decade, revitalizing the concept of companies as distinct legal entities. Under Section 7 of the Code, a financial creditor can initiate the corporate insolvency resolution process (CIRP) against a corporate debtor. Section 7(5)(a) sets out conditions for the adjudicating authority to admit a corporate debtor into CIRP, including verifying default, meeting application requirements, and ensuring no disciplinary proceedings against the proposed interim resolution professional (IRP/RP).

D. IMPACT ANALYSIS OF THE VIDHARVA CASE

With the interpretation of statute by Supreme court, the core issues are raised. In Vidarbha Industries Power Ltd vs. Axis Bank Limited (2022) the Supreme Court of India has interpreted Section 7(5)(a) of the Insolvency and Bankruptcy Code, 2016 (IBC). This section deals with the discretionary power of the Adjudicating Authority (NCLT) to admit or reject an application for the initiation of Corporate Insolvency Resolution Process (CIRP) by a financial creditor. The Supreme Court clarified that the NCLT has discretion when examining the existence of debt and default by a corporate debtor. The term “may” in Section 7(5) indicates that the NCLT may admit or reject the petition despite the existence of a default. Issues need to be covered are as follows.

The Code's Process: *A creditor can file a petition with the National Company Law Tribunal (NCLT) if a debt is unpaid (Section 7). Traditionally, upon confirming the debt and default, the NCLT was obligated to admit the company to insolvency resolution (CIRP).*

Shifting Interpretations: *Earlier rulings like Innoventive Industries Ltd. and Swiss Ribbons (P) Ltd. emphasized a swift and mandatory CIRP admission upon establishing default.*

Discretion Introduced: *The recent Vidarbha Industries Power Ltd. case changed the landscape. It ruled that the NCLT has the discretion to consider the debtor's arguments against CIRP admission (Section 7(5)(a)). This has been a point of contention.*

Arguments for Change: *Proponents of the Vidarbha decision believe it strengthens debtor defences and prevents frivolous CIRP admissions.*

Concerns Raised: *Critics argue that this discretion slows down the process and weakens the Code's original intent of swift resolution.*

Thus, debate revolves around the discretionary nature of the adjudicating authority's power to admit a corporate debtor into CIRP, whether it is based on discretion or a mechanistic approach following Section 7(5) criteria. In India's insolvency framework, the appointment of the RP by the NCLT post-admission into CIRP underscores the significance of this discretion, especially when urgent actions are needed to sustain the corporate debtor's operations for a successful resolution. Although Section 7(4) mandates a decision on a financial creditor's application within 14 days of receipt, delays in processing applications have been prevalent due to extended hearing and decision-making timelines. The Insolvency and Bankruptcy Code (IBC) aims to provide a fair and efficient system for creditors to recover their debts from insolvent companies. A mechanistic approach, strictly following Section 7(5) criteria of debt and default, would ensure creditors can initiate CIRP whenever these conditions are met.

E. POST VIDHARVA CASE ANALYSIS

However, a new development occurred to elucidate the jurisprudence & also interpretation of IBC.

(a) M. Suresh Kumar Reddy v. Canara Bank

In the case of M. Suresh Kumar Reddy v. Canara Bank (May 11, 2023), the Supreme Court aimed to clarify the confusion created by the Vidarbha Industries Power Ltd. v. Axis Bank Ltd. judgment regarding discretionary power under Section 7 of the Insolvency and Bankruptcy Code (IBC).

Supreme Court's judgement in **M. Suresh Kumar Reddy v. Canara Bank** highlights the following issues.

Reiterated Core Principle: *The court reaffirmed the established principle that when a financial creditor proves the existence of a debt and a default by the corporate debtor, the NCLT (National Company Law Tribunal) is obligated to admit the application for CIRP (Corporate Insolvency Resolution Process) under Section 7 of the IBC.*

Vidarbha Clarified: *The court distinguished the Vidarbha Industries case, stating that the discretion to reject applications was meant for specific situations with unique circumstances, not a general rule.*

Focus on Debt & Default: *The Supreme Court emphasized that the existence of debt and default remains the primary criterion for admitting an application under Section 7. NCLT's discretion cannot override this core principle.*

This judgement aimed to bring back predictability and streamline the admission process for insolvency proceedings under Section 7 of the IBC.

(b) Ashok Kumar Tyagi v. UCO Bank NCLAT.

The NCLAT judgment in **Ashok Kumar Tyagi v. UCO Bank** doesn't offer a definitive interpretation of Section 7 but attempts to reconcile two prior judgments: *Vidarbha Industries* and *M. Suresh Kumar Reddy.*

The summary of the NCLAT's approach in this case:

Acknowledgement of Debt and Default: *The NCLAT recognized that the corporate debtor in this case admitted both the existence of debt and being in default. This would typically trigger the initiation of CIRP under Section 7.*

Unique Twist: *Settlement Opportunity: However, after the NCLT admitted the insolvency petition, the corporate debtor proposed a one-time settlement (OTS) to the creditor (UCO Bank). The bank offered a counterproposal, which the debtor apparently accepted. But there was no further response from the bank.*

Balancing Act and Conditional Stay: *Considering both Vidarbha Industries (potential for rehabilitation) and M. Suresh Kumar Reddy (creditor rights), the NCLAT issued a unique order. It stayed the CIRP proceedings for 60 days to allow the bank time to decide on the debtor's acceptance of their counterproposal.*

CIRP Initiation if No Settlement: *The NCLAT clarified that if no settlement materialized within 60 days, the CIRP process would commence, and the initial stay order would become ineffective.*

In essence, the NCLAT aimed to balance the interests of both parties. It acknowledged the creditor's right to initiate CIRP but also provided a window for a possible settlement, potentially aligning with the debtor's rehabilitation prospects as suggested in the Vidarbha Industries case.

It's important to note that this judgment is from a single NCLAT bench and may not set a binding precedent for future cases. A larger bench or the Supreme Court might offer a more definitive interpretation of Section 7 in such scenarios.

(c) NCLAT in Sunder Nagar Coop. Housing Societies Union case

The judgment of the NCLAT in Sunder Nagar Coop. Housing Societies Union Ltd. vs. State Bank of India (31-May-2023) judgments are often complex and nuanced throwing some view.

The NCLAT likely dismissed the appeals challenging the NCLT's admission order under Section 7 of the IBC. This suggests the NCLT found sufficient evidence of debt and default by the corporate debtor.

The NCLAT likely distinguished the Vidarbha Industries case on the basis of facts. Unlike Vidarbha Industries, where the company might not have clearly admitted debt, the Sunder Nagar case likely involved a clear admission by the debtor.

The NCLAT likely relied on the M. Suresh Kumar Reddy case as a precedent for upholding the NCLT's decision. The M. Suresh Kumar Reddy case clarified that courts are obligated to admit petitions under Section 7 when debt and default are proven.

(d) Steps taken Ministry of Corporate Affairs (MCA)

Ministry of Corporate Affairs (MCA) under the Government of India took proactive steps. In January 2023, the MCA invited public comments on proposed amendments to the Insolvency and Bankruptcy Code (IBC). These amendments specifically target Section 7, aiming to clarify the NCLT's role in admission processes. The proposal lies in restricting the NCLT's discretion as interpreted in the Vidarbha Industries case. The MCA proposes amending Section 7 to explicitly state that the NCLT must admit an application upon being satisfied that a "default" exists as defined under Section 2 of the Code. This definition outlines specific scenarios of non-payment by a debtor. The proposal further clarifies the government's original legislative intent. It emphasizes that the power granted to NCLT under Section 7 was never intended to be discretionary in the way interpreted by the Vidarbha Industries judgment. By clearly outlining these points, the MCA aims to streamline Section 7 admissions and ensure a more predictable and creditor-friendly process.

(e) Review Petition with Supreme Court

The Supreme Court's judgment in Vidarbha Industries sparked debate. Unwilling to accept the decision, Axis Bank, the creditor in the case, filed a Review Petition (Review Petition (Civil) No. 1043 of 2022). This petition essentially requested the Supreme Court to reconsider its own judgment in Vidarbha Industries.

The Supreme Court, while disposing of the Review Petition, offered some clarification. It acknowledged that the observations made in the Vidarbha Industries case were specific to the

factual context of that particular dispute. In simpler terms, the court emphasized that the reasoning behind the judgment should not be seen as a **universal interpretation of the law** itself.

It seems that despite this clarification, the Supreme Court maintained its core holding in Vidarbha Industries. It reaffirmed that the power granted to NCLT under Section 7(5)(a) of the IBC is *discretionary, not mandatory*. This means NCLT retains the authority to decide whether or not to admit an application for initiating CIRP, even when a financial creditor presents evidence of debt and default. This outcome offered some, but not complete, vindication for Axis Bank. While the Supreme Court acknowledged the specific circumstances of the Vidarbha Industries case, it didn't overturn the broader principle of NCLT's discretion in admitting insolvency petitions. The Supreme Court's judgment in Vidarbha Industries, which introduced discretion into Section 7 admissions, sent shockwaves through the insolvency landscape in India. While intended to provide flexibility, it triggered a series of unintended scene.

Conflicting Interpretations: NCLTs and NCLATs across the country began issuing contrasting judgments on the scope of the adjudicating authority's newfound discretion. This lack of uniformity created confusion and uncertainty for both creditors and debtors.

Protracted Admissions: Corporate debtors, armed with the possibility of contesting admission based on various factors, started employing this as a strategy. This led to prolonged admission processes, often delaying the initiation of CIRP, and frustrating the objective of swift insolvency resolution envisioned by the IBC.

Divergence from Code's Objectives: The core purpose of the IBC is to expedite insolvency resolution and maximize value recovery for creditors. The delays caused by contesting admissions under Vidarbha Industries directly contradicted this objective.

The dismissal of the review petition for Vidarbha Industries further solidified this state of uncertainty. Without a clear, definitive interpretation from the Supreme Court, the application of Section 7 became a battleground for contesting parties. This not only burdened the insolvency system but also potentially weakened its effectiveness as a deterrent against bad debts.

Vidarbha Industries on Shaky Ground: A Full Bench to Reconsider Discretion in Section 7 Admissions

(f) Full Bench of Supreme Court (C.A. 533 of 2023)

While the Supreme Court's judgment in Vidarbha Industries, which granted discretion to NCLTs in admitting insolvency petitions, remains technically binding, its future seems uncertain. A recent development suggests this precedent could be overturned.

The Supreme Court, in a noteworthy move, has issued a notice in a new case (Maganlal Daga HUF & Anr vs Jag Mohan aga & Ors) where the observations made in Vidarbha Industries will be reconsidered. This three-judge bench, headed by Chief Justice Dr. D.Y. Chandrachud, could potentially clarify, or even overrule the discretionary power granted by Vidarbha Industries.

F. Conclusion

Until the Court delivers its final verdict, applicants under Section 7 should be cautious. It's crucial for them to submit strong pleadings and evidence clearly demonstrating the corporate debtor's insolvency. This proactive approach can help pre-empt arguments based on Vidarbha Industries and increase the chances of a successful admission to CIRP. In the absence of a definitive answer on the discretionary nature of adjudicating authority's power to admit a corporate debtor into CIRP, it is recommended that all applicants under Section 7 of the Code ensure their submissions comprehensively demonstrate the debtor's insolvency. This proactive approach can mitigate potential challenges based on discretion and expedite the CIRP admission process.

Analysis of Honourable Supreme Court Judgement in the case of Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni (Civil Appeal No. 7590 -7591 of 2023) vide order dated 12.02.2024.

Mr. Manoj Kumar Anand
Insolvency Professional

A) Reason to Study it thoroughly

Earlier in the case of Homebuyers or big factory owners whereas leased land was cancelled on non-payment of Lease Rent. The Land-owning agencies like HUDA, HSIDC, PUDA, NOIDA, GNIDA,JDA,MHADA etc were treated as **operational creditor** as per sec 5 (20) of the IBC 2016. Now with this judgement, they may be treated as **secured creditor** as per sec 3(30) read with sub section 31.

1) If they thought of encashing their security interest being Land than whole feasibility or Viability of plan per sec 30(2) read with CIRP regulation 37 & 38 may jeopardize.
2) But in any case, they will have upper hand even above homebuyers in **distribution of assets** from sub section (e) or (g) to sub section (b) (ii) of sec 53 (1).
3) Along with this many other issues have also been adjudicated like recalling power of AA, Re-look on Claim admission by RP, planning by RP to get it vacated etc.

B) Facts of the Case;

1) The Greater NOIDA Industrial Development Authority **(**GNIDA) allotted plot of land to JNC Construction Ltd. (Corporate Debtor) as on 28.10.201 by way of lease for 90 years.
2) As usual CD committed default & GNIDA served with demand-cum-cancellation notice.
3) CIRP was initiated against the Corporate Debtor vide order dated 30.05.2019.
4) GNIDA filed claim of Rs. 43,40,31,951/- in the category of Financial Creditor.
5) The RP treated GNIDA as operational creditor and requested to file claim in category of Operational Creditor.
6) Since GNIDA didn't file the revised claim, RP treated the claim of GNIDA of Rs 13,47,40,819 as OC only.
7) The GNIDA did not file fresh claim and in the meantime Resolution Plan was approved by the NCLT on 04.08.2020.
8) GNIDA filed an application bearing No. 344 /2021 against its treatment as operational creditor and IA 1380/2021 for recall of order approving Resolution Plan.
9) NCLT rejected the applications of the GNIDA and Appeal filed before NCLAT was also rejected.

C) Pleading by Appellant

1) RP wrongly treated them as OC ignoring CIRP Regulation 13, Non proper disclosure in IM, COC must have heard to them also etc. Hence plan approval is not as per law by NCLT/NCLAT u/s 31. The delay in pursuing its remedies as adjudicated by NCLT/NCLAT is misconceived due to not considering CORANA period relaxation.
2) RP should have treated GNIDA as Secured Creditor.

D) Submissions on behalf of the respondents

1) Dr. Abhishek Manu Singhvi, leading the arguments on behalf of the respondents, submitted that RP absolutely acted as per honourable SC settled law in New Okhla Development Authority vs. Anand Sonbhadra ((2023) 1 SCC 724).

(a) It is not a financial debt & hence no birth in COC & Challenge to Resolution Plan non sustainable.

(b) COC is supreme & stated various case laws to support it.

(c) No Scope of recall application by NCLT/NCLAT

(d) Further once the resolution plan, which makes a provision for the appellant, is approved by the Adjudicating Authority, it cannot be questioned through a recall application.

(e) The resolution plan was approved by the Adjudicating Authority on 04.08.2020, and the successful resolution applicant (SRA) seeking implementation of the plan informed the appellant vide letter dated 24.09.2020 about the plan, yet I.A. No.344/ 2021 was not filed before 06.10.2020 and I.A. No. 1380/2021, seeking recall, was filed only on 15.03.2021, which shows that the appellant had not been diligent in pursuing its right, if any, therefore the challenge, post approval of the resolution plan, is liable to be rejected; and

(f) There appears no material irregularity in the approval of the Resolution Plan, particularly, when the commercial wisdom of the COC is not justiciable.

E) Findings of the Supreme Court

1) The Supreme Court observed that a Court or a Tribunal has inherent power to recall an order to **secure ends of justice** or to prevent abuse of process of the Court. IBC or regulations framed thereunder do not prohibit exercise of such inherent power. **Section 60 (5) (c)** of the IBC empowers NCLT to entertain or dispose of any questions of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor or corporate person under IBC. **Rule 11 of NCLT rules** preserves inherent power of the Tribunal. The Supreme Court observed that even without empowering provision a Tribunal has power to recall.

2) Power to recall has to be used sparingly on limited grounds i.e. where order is without jurisdiction, party has not been served with notice or order has been received on misrepresentation of facts or playing fraud on court.

3) The Supreme Court held that **Application filed by the GNIDA for recall was maintainable** as it was not informed about meeting of the CoC, the proceeding was ex parte, there was misrepresentation on the Part of the RP and the NCLT erred in approving the Resolution Plan.

4) The Supreme Court held that the Resolution Plan **did not meet the requirements of Section 30 (2) of IBC R/w CIRP Regulations 37 and 38**.

5) It was undisputed fact that claim of **Rs. 43,40,31,951 /-** has been filed. GNIDA was advised to file claim Form B in category of Operational Creditor rather than in Form C meant for Financial Creditors. Assuming that GNIDA did not heed the advice once the claim has been filed with proof the same **could not have been overlooked.**

6) **Form** in which a claim has to be submitted is **directory**. What is necessary is that the claim should have **support with proof**.

7) Resolution Plan has not only **failed in acknowledging the claim** made but also in mentioning the **correct figure of the amount due and payable**. Resolution Plan mentions figure at Rs. 13,47,40,819/- whereas according to GNIDA amount due was Rs. 43,40,31,951/-. **These aspects have not been considered by NCLT and NCLAT.**

8) The Resolution Plan also did not put GNIDA in the category of secured creditors although by virtue of **Section 13A of 1976 Act, charge was created in favour of GNIDA**. Non-placement of secured creditor in category of secured creditor has affected adversely interest of GNIDA.

9) Regulation 38 (3) of CIRP Regulations, 2016 provides that Resolution Plan should demonstrate that it is feasible and viable, and it has provisions for approvals required. **When land of the Corporate Debtor belongs to a statutory body, a closer examination of Resolution Plan's feasibility has to be undertaken This aspect was also not deliberated by NCLT or NCLAT**.

Appeal was allowed and the Supreme Court sent back the Resolution Plan to CoC for resubmission after satisfying the parameters provided under the Code.

F) Conclusion.

1) We practicing insolvency professional need to keep **ourself updated** all the time as provisions earlier settled by Apex Court are sometimes reversed back. It may again be re-reversed by amendment in the IBC 2016 after elections as IBBI has already issued discussion paper on this aspect as on

2) While collating claim, **supports be given more importance** than claim Form `C` or `D` etc. **I.M. must disclose all aspects** like claim filed by stakeholders & collated by him especially when material amount is involved otherwise it shall not be sec 30(2) compliant.

3) All **resolution plans passed earlier** may require to be **re-visited** in the light of above judgements.

4) All **future resolution** plan must be passed **keeping contours of this judgement** especially feasibility & viability of plan as per sec 30(2) read with CIRP regulation 37 & 38.

5) **NCLT shall also examine** all the plans for approval u/s 31 in the light of above judgement.

6) Unsecured Financial Creditors (**Homebuyers**) may suffer due to treatment of Land-owning agencies as Secured Creditor **having priority over them** in distribution u/s 53.

7) This judgement shall not only affect Real Estate Sector but also Factory owners whose lease deeds has been cancelled.

8) **RP/COC must endeavour to get vacated the lease cancellation** order from High Court.
In all probability**, all plans may be put on hold** till **amendment in IBC 2016** is not brought in consonance of its **objective of Revival & keeping CD as Going concern.** The **priority** in payment to secured creditor will definitely **jeopardize** Revival & Going concern of CD.

CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- **Kesoram Industries Ltd. v. Pratim Bayal [2024] 159 taxmann.com 27 (NCLAT- New Delhi)**

Where appellant claimed its financial debt on basis of inter-corporate loans given from time to time to corporate debtor, however, there was no disbursement for time value of money and there was no financial record of corporate debtor reflecting any such transaction with regard to alleged inter-company loan, essential ingredients to prove a financial debt were missing and, thus, NCLT did not commit any error in rejecting appellant's claim as a financial creditor.

Application filed under section 9 against the corporate debtor was admitted and a Resolution Professional (RP) was appointed. In pursuance of public announcement, the appellant filed its claim as a financial creditor on basis of inter-corporate loans given from time to time to the corporate debtor. RP sent an e-mail requested the appellant to provide relevant documents to prove its claim. Thereafter, RP again communicated to the appellant but no such records had been furnished, nor any financial records of the corporate debtor reflected any such transaction with regard to alleged inter-company loan and, therefore, in absence of any material, he was unable to verify and admit claim of the appellant. The appellant filed an application before NCLT seeking to set aside RP's decision and to restore claim of the appellant as financial creditor. NCLT by impugned order rejected said application and upheld RP's decision. It was noted that the appellant categorically stated that the corporate debtor was a business division of its company, such statement in itself was testimony to fact that there could not have been a loan agreement or disbursement to the corporate debtor. It was further noted that balance sheet of the corporate debtor as well as the appellant was under same Chairman, and balance sheet even if it was taken at its face value did not in any manner prove that there was any financial debt.

Held that financial debt ought to have been reflected under the heading of borrowings and there was no reflection of claim which was filed in Form C under the heading of borrowings. When there was no disbursement for time value of money, essential ingredients to prove a financial debt were missing, thus, NCLT did not commit any error in rejecting the application filed by the appellant and instant appeal was to be dismissed.

Case Review: SRF Ltd. v. Birla Tyres Ltd. [2024] 159 taxmann.com 26 (NCLT - Kol.) (SB) affirmed.

SECTION 62 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES-SUPREME COURT, APPEAL TO

- **K.M. Cherian v. Union of India [2024] 159 taxmann.com 31 (SC)**

Where petitioner-doctor, who had set up FLPL filed a petition seeking direction to respondent-U.O.I to formulate guidelines/scheme for grant of sanctions/approval/clearances for speedy and effective implementation of time-sensitive medical research, to secure right to health; however, in fact, petition was actually related to petitioner's specific grievance in regard to insolvency proceedings against FLPL, Supreme Court was not inclined to entertain such petition, which was not purportedly in public interest and, thus, same was to be dismissed.

The petitioner was a doctor, who had set up India's first Bio-Medical Special Economic Zone in 2004 i.e., FLPL, a cardiac speciality hospital. The petitioner filed instant petition before the Supreme Court seeking direction to respondent-U.O.I to formulate guidelines/scheme for grant of sanctions/approval/clearances for speedy and effective implementation of time-sensitive medical research, to secure right to health under Article 21 of Constitution of India, 1950 and to constitute a Committee to examine irregularities in conduct of CIRP pertaining to FLPL pursuant to order of NCLT, Chennai dated 2-8-2018. It was noted that the petitioner challenged NCLT's order, in which NCLT admitted section 7 application filed by the financial creditor and same was upheld by the NCLAT. It was further noted that FLPL was under Liquidation proceedings.

Held that instant writ petition was infact relatable to the petitioner's specific grievance in regard to proceedings of insolvency against FLPL, therefore, the Supreme Court was not inclined to entertain such petition, which was not purportedly in public interest and same was to be dismissed.

SECTION 5(21) - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

- **Mudraksh Investfin (P.) Ltd. v. Brijesh Singh Bhaduriya, Resolution Professional of RCI Industries and Technologies Ltd. [2024] 159 taxmann.com 89 (NCLAT- New Delhi)** ***In view of Notification No. S.O. 1205(E), dated 24-3-2020, order passed by NCLT admitting application under section 9 where default amount was less than Rs. 1 crore was to be stayed.***

Where transactions between parties arose out of sale and purchase of goods, in which appellant as financiers made direct payment to suppliers, however, no disbursement was made directly to corporate debtor, impugned order passed by NCLT that said transactions could not be held to be a financial debt and claim of appellant was only an operational debt was justified.

The corporate debtor had purchased certain goods from one of its suppliers. Since the corporate debtor did not have sufficient liquidity, the corporate debtor availed factoring services granted by financiers i.e., SBI and DBS bank, under Factoring Regulation Act, 2011 and entered into a Master Buyer Agreement with one M. Ltd. for availing facilities for discounting and re-discounting of trade receivables/invoices of suppliers from buyer through financiers. Meanwhile, financial debt owed by the corporate debtor to financiers were assigned to the appellant. CIRP was commenced against the corporate debtor. Meanwhile, the appellant submitted its claim in Form-C. Resolution Professional (RP) sought for further documents from the appellant and categorized the appellant as operational creditor. The appellant aggrieved by categorization filed an application before NCLT to admit claim of the appellant as a financial creditor. NCLT vide impugned order rejected said application on ground that transactions between the corporate debtor and supplier were for purchase of goods in normal course of business of the corporate debtor and, therefore, it was an operational debt under section 5(21).

Held that section 5(8)(e) specifically covers receivables sold or discounted, discounting of invoices cannot be covered by any other clause and, hence, discounting of invoices cannot fall under section 5(8)(f), thus transaction was that of discounting of invoices by financiers and financiers had made payment to suppliers, since no disbursement was made to corporate debtor, transactions could not be held to be a financial debt and therefore, no error was committed by NCLT in upholding view of RP that claim of the appellant was only an operational debt.

Case Review: Standard Chartered Bank Singapore Ltd. v. RCI Industries and Technologies Ltd. [2024] 159 taxmann.com 88 (NCLT -New Delhi), affirmed.

SECTION 31 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN

- **Authum Investment and Infrastructure Ltd. v. Rajneesh Sharma Administrator of SREI Equipment Finance Ltd. and SREI Infrastructure Finance Ltd. - [2024] 159 taxmann.com 242 (NCLAT- New Delhi)**

Where appellant, one of bidder, challenged approved resolution plan of R2 on ground that no marks were allocated to appellant on equity allotment, however non-allocation of marks on equity allotment to appellant was in accordance with Process Document and Evaluation Matrix further determination of NPV of R2 was as per final Resolution Plan as done by Consolidated CoC and its advisors, thus, approval of resolution plan by NCLT was in commercial wisdom of CoC and, no grounds had been made out to interfere with NCLT's order approving resolution plan.

CIRP was initiated against SREI and SIFL- corporate debtors by NCLT and respondent no.1 (R1) was appointed as administrator. Administrator, who was authorized to act as RP invited Expressions of Interest (EoI), the appellant as well as Respondent No.2 (R2) submitted their EoI, and the plan submitted by R2 was approved by CoC with 84.86 per cent votes. The Appellant challenged said resolution plan on ground that plan submitted by R2 was non-compliant with section 30(2). However, NCLT by impugned order rejected applications filed by the appellant and approved resolution plan submitted by R2. The appellant filed an instant appeal against impugned order on ground that no marks were allocated to the appellant on equity allotment. It was noted that NPV value of R2 found as Rs.5,555.50 Crores and that of the appellant was Rs.5,526 Crores and after receipt of NPVs value from CoC Advisors, Administrator informed all three PRAs that R2 had highest NPV. It was further noted that value of equity offered by appellant was Rs.200 Crores which did not meet minimum INR 250 Crores threshold as prescribed in evaluation matrix and CoC never opted to accept equity allotment as offered by appellant.

Held that when equity allotment was never accepted there was no question of giving any marks to the appellant on equity allotment. Determination of NPV of R2 was as per final resolution plan as done by Consolidated CoC and its advisors, thus, had to be treated as final and could not be allowed to be challenged by any other resolution applicants. Non-allocation of marks on equity allotment to the appellant was in accordance with Process Document and Evaluation Matrix and further determination of NPV of Resolution Plan of the R2 could not be faulted and, same was in accordance with evaluation matrix and Process Document. Allocation of no marks in equity allotment was as per Process Document and, thus, evaluation matrix and approval of Resolution Plan by NCLT was in commercial wisdom of CoC.

Case Review: Reserve Bank of India v. SREI Infrastructure Finance Ltd. [2024] 159 taxmann.com, affirmed

SECTION 60 - CORPORATE PERSON'S ADJUDICATING AUTHORITY - ADJUDICATING AUTHORITY

- **A Deputy Commissioner (WORKS CONTRACT) v. National Company Law Tribunal [2024] 159 taxmann.com 277 (Kerala)**

Where RP filed an application before NCLT seeking permission to appeal against an assessment order passed by petitioner-GST Deptt. however, instead of considering RP's application, NCLT assumed jurisdiction of Constitutional Court to declare assessment order as void ab initio, impugned order passed by NCLT showed lack of basic understanding of law and, therefore, same was unsustainable.

Corporate insolvency resolution (CIRP) was initiated against the corporate debtor and, moratorium was declared. Thereafter, on verification of assessment records of the corporate debtor pertaining to period 2015-16 certain irregularities were noticed. Consequently, the petitioner, GST Deptt. issued notice under section 25(1) of the Kerala Value Added Tax Act, 2003 (KVAT) to the corporate debtor and assessment order was passed. The petitioner further claimed Rs. 11.76 crores in Form-C before RP. Against the petitioner's Form-C application, RP filed an application before NCLT under section 33(5) seeking permission to file an appeal against assessment order passed by the petitioner. NCLT vide impugned order held that assessment order was passed in violation of prohibition provided under section 14(1)(a), and, thus, assessment order was void ab initio.

Held that after declaring moratorium, there is an embargo on enforcing demand, but there is no embargo under section 14 for determining quantum of tax and other levies, if any, against the corporate debtor. Company Law Tribunal has no power and authority under IBC to declare an assessment order as void ab initio and non est in law. Instead of considering an application filed by RP for permission to file an appeal against assessment order, NCLT assumed jurisdiction of Constitutional Court to declare assessment order as void ab initio. Impugned order passed by NCLT showed lack of basic understanding of law and, therefore, impugned order passed by NCLT was unsustainable, and same was to be set aside.

Case Review: Vinod Balachandran (Liquidator), In re [2024] 159 taxmann.com 276 (NCLT - Kochi), reversed.

SECTION 60 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - ADJUDICATING AUTHORITY

- **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni [2024] 159 taxmann.com 301 (SC)**

Even in absence of a specific power in IBC empowering NCLT to recall its order, NCLT can recall its order under its inherent powers to secure ends of justice and/or to prevent abuse of process of Court notwithstanding that an appeal lay before NCLAT against order of approval of resolution plan passed by NCLT.

CIRP petition filed against the corporate debtor was admitted and claims were invited through a public announcement. The appellant submitted its claim as a financial creditor, however, RP treated the appellant as an operational creditor and requested the appellant to submit its claim as an operational creditor of the corporate debtor. In meantime, CoC approved a resolution plan and same was further approved by NCLT. The appellant filed an application before NCLT on ground that no opportunity of hearing was given to the appellant by CoC and entire process right up to approval of plan by NCLT was ex parte. NCLT rejected said application. The appellant filed appeal before NCLAT on ground that RP misrepresented that the appellant had submitted no claim while a claim was submitted by the appellant and, therefore, there was a gross mistake on part of NCLT in approving plan, which did not fulfil conditions laid down in section 30(2). However, NCLAT upheld NCLT's order. It was noted that neither NCLT nor NCLAT rejected assertion of the appellant that the appellant had submitted its claim with proof before RP.

Held that a Court or a Tribunal, in absence of any provision to contrary, has inherent power to recall an order to secure ends of justice and/or to prevent abuse of process of Court. Even in absence of a specific power in IBC empowering NCLT to recall its order, NCLT can recall its order under its inherent powers to secure ends of justice and/or to prevent abuse of process of Court notwithstanding that an appeal lay before NCLAT against order of approval of resolution plan passed by NCLT. Neither NCLT nor NCLAT while deciding application/appeal of the appellant took note of fact that, the appellant had not been served notice of meeting of CoC. Since appellant had submitted its claim and was a secured creditor by operation of law, resolution plan projecting that the appellant had not submitted its claim did not meet all parameters laid down under section 30. Therefore, order passed by NCLAT and NCLT was to be set aside and resolution plan was to be sent back to CoC for re-submission.

Case Review: Greater Noida Industrial Development Authority v. Prabhjit Singh Soni [2024] 158 taxmann.com 711 (NCLAT - New Delhi), reversed.

SECTION 65 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR MALICIOUS PROCEEDING

- **Ashmeet Singh Bhatia v. Pragati Impex India (P.) Ltd. [2024] 159 taxmann.com 314 (NCLAT- New Delhi)**

NCLT has jurisdiction under section 65 to close CIRP process and pass all consequential order and, thus, mere admission of a section 7 application does not denude jurisdiction of NCLT to examine an application filed under section 65.

Respondent No.1-financial creditor filed an application under section 7 for initiation of CIRP against the respondent no. 2-corporate debtor, which was admitted by NCLT and CIRP was initiated. The appellant, one of homebuyer in a sister company of the corporate debtor filed an application before NCLT making serious allegations of collusion and fraud against the financial creditor and the corporate debtor. NCLT vide impugned order rejected said application on ground that the appellant had no transaction with the corporate debtor and he had no locus to oppose order admitting CIRP application when said order was affirmed by NCLAT. It was noted that there was round tripping of amount, which transaction was initiated by related party of the financial creditor (O.S) and after routing through the financial creditor and the corporate debtor same was returned to O.S on same day.

While exercising jurisdiction under section 65, NCLT is also fully entitled to close CIRP process and pass all consequential order. Mere fact that section 7 application has been admitted does not denude jurisdiction of NCLT to examine application under section 65. Mere fact that application had been filed at time when plan was under consideration did not take away jurisdiction of NCLT to consider allegations and find out truth, if any. Therefore, NCLT committed error in rejecting said application without considering application on its merit. Impugned order was to be set aside and the appellant's application was revived before NCLT to be considered and decided in accordance with law.

Case Review: Pragati Impex India (P.) Ltd. v. Vistar Construction (P.) Ltd. [2024] 159 taxmann.com 313 (NCLT - New Delhi) (SB), reversed.

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

- **Ashok Singh v. Babu Lal Sharma [2024] 159 taxmann.com 529 (NCLAT- New Delhi)**

Where corporate debtor filed instant appeal on ground that despite a pre-existing dispute over outstanding amount and quality of work rendered by operational creditor NCLT admitted CIRP petition, since there was no dispute regarding running bill and invoices issued by operational creditor had been verified and confirmed by technical person, NCLT had rightly admitted application for initiation of CIRP under section 9.

The corporate debtor entered into a sub-contractor agreement with respondent No. 2-operational creditor, in which the operational creditor undertook to complete construction project. Thereafter, operational creditor raised various invoices against corporate debtor. However corporate debtor failed to pay any amount even after work had been done and also after running bills had been signed and verified by technical persons of corporate debtor. Consequently, operational creditor filed a petition under section 9 against corporate debtor. NCLT vide impugned order admitted said petition. Appellant, suspended director of corporate debtor filed instant appeal on ground that despite pre-existing dispute with respect to outstanding amount and quality of work rendered by operational creditor, NCLT admitted CIRP petition and, thus, same was to be set aside. It was noted that apart from Rs. 11 lakhs, which was paid as mobilization advance, no other payments had been made, even though running bills had been sent over a period of time. It was further noted that no dispute had been raised with respect to running bill and no reply was issued to demand notice. Whether corporate debtor had not replied to all communications and very belatedly raised issue that work had not been done as per sub-contractor agreement. Held, yes. Whether invoices raised by operational creditor were verified and confirmed by technical person. Held, yes. Whether since corporate debtor defaulted in making full payments against services rendered by operational creditor which was more than Rs. 1 lakh, NCLT had rightly admitted application for initiation of CIRP under section 9.

Case Review : RG Colonizers (P.) Ltd. v. Macro Infra Contractors (P.) Ltd. [2024] 159 taxmann.com 528 (NCLT - Jaipur), affirmed.

SECTION 25 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL - DUTIES OF

- **Umesh Kumar v. Narendra Kumar Sharma, Insolvency Resolution Professional of Indirapuram Habitat Centre (P.) Ltd. [2024] 159 taxmann.com 707 (NCLAT- New Delhi)**

Where appellant filed claim before RP for consultancy services rendered to corporate debtor, since appellant failed to provide any document to RP to substantiate its claim, impugned order passed by NCLT rejecting claim of appellant was justified.

The appellant-operational creditor claimed that he was hired as a media management consultant on a monthly retainer ship of Rs. 10 lakhs per month for which purpose appellant had entered into a Consultancy Agreement with the Corporate debtor. After the corporate debtor was admitted into insolvency, Resolution Professional (RP) invited claims, in which the appellant filed its claims vide e-mail dated 28-3-2020.. However, same was rejected by the RP. The appellant filed an application before NCLT seeking direction to RP to admit its claim. NCLT vide impugned order rejected said application on ground that the appellant failed to show any document to substantiate plea of rendering services by the appellant to the corporate debtor and, thus, there was no infirmity in conclusion drawn by RP that he could not find any media service rendered by the appellant during period for which consultancy fees were claimed. Aggrieved by NCLT's order, the appellant filed instant appeal. It was noted that e-mail sent to RP enclosing GST invoice for consultancy till month of August 2019 and in said tax invoice service Description" column of invoice, only words "Management Consultancy" had been stated without giving any further details. It was further noted that RP had made it clear that due to want of documents in support of their claims, RP was unable to verify claims of the appellant whenever, the appellant failed to comply to persistent request of RP for documents.

Held that there was no incidence of wilful negligence, or deliberate stonewalling of claims on part of the RP in dealing with appellant's claim. Since RP had been consistently pointing out that he was not in a position to verify claims due to want of documents substantiating claims, impugned order passed by NCLT rejecting application of the appellant seeking acceptance of their claims which had been rejected by RP, did not suffer from any infirmities.

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The articles sent for publication in the journal "The Insolvency Professional" should conform to the following parameters, which are crucial in selection of the article for publication:

✓ The article should be original, i.e., not published/broadcasted/hosted elsewhere including any website. A declaration in this regard should be submitted to IPA ICAI in writing at the time of submission of article.

✓ The article should be topical and should discuss a matter of current interest to the professionals/readers.

✓ It should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of.

✓ The length of the article should be 2500-3000 words.

✓ The article should also have an executive summary of around 100 words.

✓ The article should contain headings, which should be clear, short, catchy, and interesting.

✓ The authors must provide the list of references if any at the end of article.

✓ A brief profile of the author, e-mail ID, postal address and contact numbers and declaration regarding the originality of the article as mentioned above should be enclosed along with the article.

✓ In case the article is found not suitable for publication, the same shall not be published.

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